
(2011) 04 KL CK 0072

In the High Court Of Kerala

Case No : O.P. (C) . No. 1554 of 2011

Manmadhan Nair, Nirmala Devi and Nirmala Kumari

APPELLANT

Vs

Padmavathi Amma @ Thankamma

RESPONDENT

Date of Decision : 26-04-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 3A

Citation : (2011) 04 KL CK 0072

Hon'ble Judges : Thomas P. Joseph, J

Bench : Single Bench

Advocate : R.T. Pradeep, for the Appellant; No Appearance, for the Respondent

Judgement

Thomas P. Joseph, J.—Respondents in I.A. No. 2821 of 2011 in O.S. No. 547 of 2011 of the court of learned IIIrd Additional Munsiff, Thiruvananthapuram are the Petitioners before me challenging Ext.P3, order dated 31-03-2011 restraining them from committing waste in the schedule property, cutting and removing trees or for making any construction therein till partition and separate possession is effected through court. Learned Counsel submitted that Ext.P3, order is passed without authority since the claim for partition is pending decision in A.S. No. 62 of 2003 of this Court and hence any application for injunction ought to have been moved in the said appeal. Learned Counsel also challenges the direction issued by the learned Munsiff in Ext.P3, order that the matter may be communicated to the police station concerned. According to the learned Counsel, that direction is wholly without jurisdiction. It is pointed out by learned Counsel that under Rule 3A of order XXXIX of the Code of CPC (for short, "the Code") the court is bound to make every Endeavour to dispose of the application for injunction within 30 days from the date of grant of ex-parte, interim order of injunction. Learned Counsel has placed reliance in the decision in A. Venkatasubbiah Naidu Vs. S. Challappan and Others, .

2. Even as per the said decision, on the expiry of the said period of 30 days from the date of grant of ex-parte, interim order of injunction, if the application is not

disposed of, the order is amenable to an appeal. It is open to the Petitioner to challenge the impugned order before the appellate forum as provided under law. So far as the grievance of Petitioner that non-disposal of the application as early as possible is working out difficulties to the Petitioners is concerned, having regard to the object of legislature in enacting Rule 3A of Order XXXIX of the Code the learned Munsiff has to dispose of I.A. No. 2821 of 2011 as provided under law and, at any rate as early as possible.

Resultantly this original petition is disposed of without prejudice to the right of Petitioners to challenge Ext.P3, order in appeal as provided under law. Learned IIIrd Additional Munsiff, Thiruvananthapuram is directed to dispose of I.A. No. 2821 of 2011 (in O.S. No. 547 of 2011 of that court) as early as possible having regard to the grievance of Petitioners, their objection to the matter being communicated to the police and the direction contained in Rule 3A of Order XXXIX of the Code.