

**(2010) 07 KL CK 0030**

**In the High Court Of Kerala**

**Case No : Writ Petition (C) No. 21623 of 2010 (O)**

Sree Subramanya Swami Temple

APPELLANT

Vs

Sulochana Amma

RESPONDENT

**Date of Decision : 12-07-2010**

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 7  
Easements Act, 1882 — Section 17

**Citation : (2010) 07 KL CK 0030**

**Hon'ble Judges : Thomas P. Joseph, J**

**Bench : Single Bench**

**Advocate : G. Bhagavat Singh, for the Appellant; No Appearance, for the Respondent**

## **Judgement**

Thomas P. Joseph, J.—Petitioner is one of the Defendants in O.S. No. 330 of 2005 of the court of learned Munsiff, Varkala filed by the Respondent seeking a decree for prohibitory injunction. According to the Petitioner as per devaprasnam conducted in the temple, renovation of the structures and reinstallation of diety are required and in accordance with that, Petitioner attempted to reconstruct the damaged portion which was objected by Respondent who then filed O.S. No. 330 of 2005 and obtained an exparte order for injunction. Later that application was dismissed against which Respondent filed C.M.A. No. 5 of 2006 in the court of learned Sub Judge, Attingal. That C.M. Appeal was disposed of directing the parties to maintain status quo though according to the Petitioner, appellate court also found that Respondent has no case on merit. Later, the suit was tried and dismissed against which Respondent preferred A.S. No. 65 of 2010 in the court of learned Sub Judge, Attingal and filed an application for temporary injunction. In the meantime, Petitioner filed O.S. No. 141 of 2010 against Respondent in the court of Vacation Judge, Thiruvananthapuram but, no interim order was passed in its favour. That suit is pending. On 09.06.2010 learned Sub Judge passed an interim order in A.S. No. 65 of 2010 directing the parties to maintain status quo until further orders. According to the learned Counsel that order was passed

since Petitioner did not file any objection to the application for injunction. Later Petitioner filed counter affidavit in the application for injunction (I.A. No. 945 of 2010) and another application under Order 39 Rule 7 of the CPC to permit Petitioner to carry out renovation work and an application to advance hearing of the said applications. Grievance of Petitioner is that without any reason application which was posted on 06.07.2010 is now adjourned to 19.07.2010 by which, time for renovation of the structures and reinstallation of diety will be over. Learned Counsel contends that right claimed by the Respondent is not something which could be acquired u/s 17(a) of the Easements Act. It is contended that Respondent has no manner of right to object to renovation.

2. I am afraid, it is not proper for this Court at this stage to go into the disputed rights and liabilities of the parties as that is a matter which the appellate court which is seized of the matter has to decide. If applications filed by the Petitioner are not disposed of, Petitioner can request learned Sub Judge to expedite disposal of the said applications. I make it clear that if any request is made by Petitioner to expedite disposal of the applications made in the said appeal, learned Sub Judge shall consider those applications considering the urgency stated by Petitioner and dispose of the same at the earliest.

With the above direction, Writ Petition is closed.