

Kerala High Court

Antony vs Maanspowen Jackeous on 16 June, 2008

IN THE HIGH COURT OF KERALA AT ERNAKULAM

WP(C).No. 6175 of 2008(I)

1. ANTONY, AGED 39 YEARS, S/O.ALEXANDER,
... Petitioner

Vs

1. MAANSPOWEN JACKEOUS, CLOWERLAND,
... Respondent

2. THRESIYAMMA POWEN,

3. ANIL KUMAR, CLOWERLAND, PERAYAM CHERRY

4. THE SUB DIVISIONAL MAGISTRATE,

For Petitioner :SRI.JOHNSON GOMEZ

For Respondent : No Appearance

The Hon'ble MR. Justice M.SASIDHARAN NAMBIAR

Dated :16/06/2008

O R D E R

M.SASIDHARAN NAMBIAR, J.

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W.P.(C) NO.6175 OF 2008

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Dated this the 16th day of June, 2008

JUDGMENT

Petitioner is the plaintiff in O.S.624/2004 on the file of Additional Munsiff's Court, Kollam. Respondents are the defendants. Petitioner filed I.A.2916/2004 an application for temporary injunction under Order XXXIX Rule 1 of Code of Civil Procedure. Under Ext.P1 order petition was dismissed. Petitioner challenged that order before District Court, Kollam in C.M.A.5/2005. Learned

Additional District Judge on reappreciation of the materials confirmed Ext.P1 order and dismissed the appeal. It is challenged in this petition filed under Article 227 of the Constitution of India.

2. Learned counsel appearing for petitioner was heard.

3. Learned counsel appearing for petitioner argued that trial court and appellate court did not properly consider the claim of the petitioner with regard to possession as well as irreparable injury that will be caused and the balance of convenience and there is no material suppression of fact and in such circumstance order of injunction should have been granted.

4. On hearing the learned counsel, I do not find any illegality or irregularity or other sufficient reason to interfere with Ext.P1 or P2 orders.

5. Trial court as well as appellate court found a prima facie case against petitioner and did not grant the relief. The question whether petitioner has been in possession of the plaint schedule property on the date of institution of the suit is to be finally settled on the evidence on record to be adduced in the suit. The finding in Exts.P1 and P2 will not preclude the court to decide whether petitioner is entitled to the decree for injunction sought for. In such circumstance, the petition is dismissed. Learned Munsiff is directed to dispose the suit untrammelled by any observations in Exts.P1 and P2.

M.SASIDHARAN NAMBIAR JUDGE tpl/-

M.SASIDHARAN NAMBIAR, J.

W.P.(C).NO. /06

JUDGMENT SEPTEMBER,2006