

HIGH COURT OF KERALA

BENCH : HONOURABLE MR. JUSTICE G.GIRISH

Date of Decision : 30-5-2024

FAO NO. 113 OF 2023

AGAINST THE ORDER IN I.A.NO.3 OF 2020 DATED 05.08.2023 IN OS NO.133 OF 2020 ON THE FILE OF THE PRINCIPAL SUBORDINATE JUDGE, PALAKKAD

1. **Dr. Cessy Job**
2. **Dr. Anu Elizabeth Augustine**
3. **Dr. Anoop Joby Augustine .. Appellants/Petitioners/Plaintiffs:**

VS

1. **Aleyamma Joseph**
2. **James.K.J**
3. **Mathew.K.J**
4. **Louis.J**
5. **Jessy Respondents/Defendants:**

Subject: Appeals against inadequate interim injunction orders concerning the preservation and partition of family properties and a fixed deposit following a family member's death.

Headnotes:

Partition Suit – Interim Injunction – Plaintiffs claim partition of properties and fixed deposit – Allegation of attempts to alienate properties – Temporary injunction sought – Trial court grants limited injunction – Appeal against the interim injunction orders – Appellants contend orders inadequate – Appeal

before High Court – High Court examines contentions and evidence – Finds contiguous properties without clear demarcation – Risk of loss or alienation if injunction not granted – Upholds necessity of preserving status quo – Grants broader injunction – Directs restraint on destruction, waste, and document creation – Also restrains release of fixed deposit amount – Orders to remain until final adjudication in partition suit – Interest renewal allowed to avoid loss – Appeals allowed accordingly.

Referred Cases: None.

Representing Advocates:

For Appellants: Jinu Joseph, Mathew K.S.

For Respondents: Jijo Paul Kallokkaran, Mohamed Jameel P.K., Joshy P.O., Kochurani James, Rajeev P.R.

COMMON JUDGMENT

Both these appeals are preferred by the plaintiffs in O.S.No.133 of 2020 of the Principal Sub Court, Palakkad, against the interim injunction orders passed by the said court in I.A.No.3 of 2020 and I.A.No.2 of 2020 which, according to the appellants, are inadequate to meet the purpose for which those applications are filed by them.

2. The appellants are the wife and children of Late Augustine Kattady, who was one of the sons of Late K.J.Joseph. Respondent No.1 is the mother, and respondents 2 to 4 are the brothers of the abovesaid Augustine J. Kattady. The 5th respondent is the wife of the 2nd respondent. The plaintiffs in O.S.No.133 of 2020 (the appellants herein) instituted the above suit before the Principal Sub Court, Palakkad for the partition of the landed properties mentioned as 'A' to 'D' Schedules, and the Fixed Deposit mentioned as 'E' Schedule to the plaint in the said suit. The plaintiffs contended that the plaint 'A' to 'D' Schedule properties were purchased by Late J.Joseph, making use of his own funds, though the title deed in respect of plaint 'B' Schedule property was executed in the name of respondents 2 and 5, and the title deed of plaint 'C' Schedule property in the name of respondent No.3. After the death of the abovesaid K.J.Joseph on 15.11.2011, the plaint 'A' to 'D'

Schedule properties are said to have devolved upon respondents 1 to 4 and Late Augustine J. Kattady, the predecessor of the appellants. Thereafter, on 01.09.2012, Augustine J. Kattady passed away. Thus, the appellants claimed 1/6 share over the plaint 'A' to 'D' Schedule properties. The plaint 'E' Schedule property is a Fixed Deposit of Rs.5,87,618/- jointly made by Late K.J.Joseph and Late Augustine J. Kattady at the Bank of Baroda, Vazhappally Branch. After the death of the above deposit holders, the appellants are said to have obtained right over 7/12 share of the above Fixed Deposit. Thus, the suit is instituted for the partition and allotment of 1/6 share of plaint 'A' to 'D' Schedule properties and 7/12 share of plaint 'E' Schedule Fixed Deposit to the plaintiffs (appellants). Alleging that the respondents are attempting to cut and remove valuable trees from the plaint 'A' to 'D' Schedule properties and to alienate the above properties, the appellants filed I.A.No.3 of 2020 for a temporary injunction restraining the respondents from creating any documents in respect of plaint 'A' to 'D' Schedule properties and from cutting and removing trees, committing wastes and inducting third parties in the said properties. The appellants also filed I.A.No.2 of 2023, for a temporary injunction restraining the Manager of the bank concerned from releasing the plaint 'E' Schedule Fixed Deposit to respondents 1 to 5.

3. Respondents 1, 2 and 5 resisted the interlocutory applications filed by the appellants before the Trial Court, contending that the appellants are having no manner of right over the plaint 'A' to 'D' Schedule properties. According to the above respondents, the plaint 'A' to 'D' Schedule properties are the self acquired properties of respondents 2, 3 and 5 though the plaint 'A' Schedule property and plaint 'D' Schedule property stood in the name of Late K.J.Joseph, as per the title deeds. As regards the plaint 'E' Schedule Fixed Deposit, respondents 1, 2 and 5 would contend that the name of Augustine J. Kattady was mentioned as joint account holder of the above Fixed Deposit, as a result of the deception perpetrated by the 1st appellant upon Late K.J.Joseph and his wife, the 1st respondent.

4. The learned Sub Judge, as per the impugned order dated 05.08.2023 in I.A.No.3 of 2020, restrained the respondents by a temporary injunction from creating any charge over plaint 'A' and 'D' Schedule properties in excess of their share in it as co-owners. As regards the plaint 'B' and 'C' Schedule properties, the Trial Court declined to grant interim relief, stating the reason that the said properties belonged to respondents 2 & 5, and respondent No.3 respectively. In I.A.No.2 of 2023, the learned Sub Judge

passed the impugned order dated 05.08.2023, restraining the Manager of the bank concerned from releasing one half of the Fixed Deposit which stood in the joint account of Late K.J.Joseph and Late Augustine J. Kattady. Aggrieved by the limitations imposed by the Trial Court in the temporary injunction orders sought by the appellants, they have filed the present appeals before this Court.

5. Respondents 1, 2, 4 and 5 appeared through counsel. Heard the learned counsel for the appellants, and respondents 1, 2, 4 and 5.

6. As regards the temporary injunction order passed by the Trial Court in I.A.No.3 of 2023, the appellants would contend that the restriction of the said order to plaint 'A' and 'D' Schedule properties alone, would pave the way for the respondents to alienate the plaint 'B' and 'C' Schedule properties and to cut and remove the valuable trees situated therein to the detriment of the interests of the appellants. The appellants would further point out that the Trial Court failed to take note of the fractional share of the appellants over the one half share of Late K.J.Joseph over the plaint 'E' Schedule Fixed Deposit, which devolved upon Late Augustine J. Kattady, in addition to the right of the appellants over the remaining one half share of plaint 'E' Schedule Fixed Deposit, which belonged to Late Augustine J. Kattady. Thus, it is stated that the temporary injunction order passed in I.A.No.2 of 2020, is erroneous since the right of the appellants over the 7/12 share of plaint 'E' Schedule Fixed Deposit was not taken note of by the learned Sub Judge.

7. Annexure-A3 document produced by the appellants in F.A.O No.113 of 2023 would reveal that the Advocate Commissioner, who conducted local investigation in the plaint 'A' to 'D' Schedule properties at the time of institution of the suit, was not able to identify the plaint 'A', 'B' and 'C' Schedule properties, since it were existing contiguously without any boundaries to demarcate. The learned Advocate Commissioner, in the aforesaid interim report, sought the assistance of the Village Officer concerned for identifying the properties and preparing the report, as directed by the Trial Court. According to the appellants, they had filed I.A.No.1417 of 2023 before the Trial Court to depute the very same Advocate Commissioner to conduct a further local inspection of plaint 'A' to 'C' Schedule properties with the assistance of the Village Officer, but the learned Sub Judge is yet to pass any order in that application. Be that as it may, it is apparent from Annexure-A3 interim report of the Advocate Commissioner that the plaint 'A' to 'C' Schedule properties exist contiguously without any marks of identification, and that a considerable portion of the aforesaid properties are

planted with rubber trees, and the remaining portion takes in valuable trees like teak, rosewood, etc. Thus, the apprehension of the appellants about the loss and hardships which might be caused to them, if the respondents venture to cut and remove valuable trees from the aforesaid properties, which exist contiguously, and to induct strangers in possession of portions of those properties, is wellfounded. The question regarding the right of the appellants to have shares over the plaint 'A' to 'D' Schedule properties, is a matter to be adjudicated after a comprehensive trial in the suit. However, if the value of the above properties happen to be diminished due to any acts on the part of the respondents during the pendency of the suit, or, if portions of the above properties happen to be alienated during the pendency of the suit, it would definitely cause substantial hardships to the appellants, and give rise to unnecessary complexities to the litigation. Therefore, the preservation of the present condition and state of affairs of the plaint 'A' to 'D' Schedule properties during the pendency of the suit filed by the appellants for partition, is highly necessary to meet the ends of justice. That being so, the respondents are liable to be restrained by a temporary injunction from committing destructions and wastes in the plaint 'A' to 'D' Schedule properties and creating documents in respect of the said properties pending the disposal of the partition suit.

8. As regards the plaint 'E' Schedule Fixed Deposit also, it is highly necessary to retain the above deposit, till the rights of the parties are finally adjudicated in the suit for partition. Therefore, the prayer of the appellants for a temporary injunction restraining the Manager of the bank concerned from releasing the amount under deposit, as stated in plaint 'E' Schedule, is also liable to be allowed. In the result, both these appeals stand allowed as follows :

F.A.O.No.113 of 2023

Respondents are restrained by a temporary injunction till the disposal of O.S.No.133 of 2020 of the Principal Sub Court, Palakkad from committing destructions and wastes in the plaint 'A' to 'D' Schedule properties and creating documents in respect of the said properties.

F.A.O.No.118 of 2023

The Manager of Bank of Baroda, Vazhappally Branch, Kurisumoodu, Changanassery (referred as the 6th respondent in I.A.No.2 of 2020 in O.S.No.133 of 2020 of the Principal Sub Court, Palakkad) is directed not to release the amount in Fixed Deposit, as per plaint 'E' Schedule of the said

suit, before getting intimation from the Principal Sub Court, Palakkad about the disposal of O.S.No.133 of 2020 of the said court, and the entitlement of the parties thereunder to have their respective shares over the said Fixed Deposit.

It is made clear that the aforesaid order would no way affect the renewal of the Fixed Deposit for appropriate terms to avoid loss of interest.

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