



2025:KER:72453

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE M.A.ABDUL HAKHIM

WEDNESDAY, THE 24TH DAY OF SEPTEMBER 2025 / 2ND ASWINA,

1947

FAO NO. 102 OF 2024

AGAINST THE ORDER DATED 09.08.2024 IN I.A NO.1/2024

IN OS NO.4 OF 2024 OF ADDITIONAL SUB COURT, IRINJALAKUDA

APPELLANT/ 1ST RESPONDENT

JAYAKRISHNA MENON,
AGED 43 YEARS, S/O K.M GOPINATHAN NAIR,
AKKANATHU VEEDU, PUTHUPPALLY NORTH,
PUTHUPPALLY VILLAGE, ALAPPUZHA,
NOW RESIDING AT AMRITHANANDAMAYI MADOM,
VALLIKKAVU, KARUNAGAPPALLY, KOLLAM- 690546

BY ADVS.
SRI.C.UNNIKRISHNAN (KOLLAM)
SRI.D.JAYAKRISHNAN
SHRI VIJAYKRISHNAN S. MENON
SHRI.VIVEK NAIR P.
SHRI.M.R.RADHAKRISHNAN
SHRI.PRAVEEN P.
SMT.PINKY R.
SMT.SRUTHI SINDHU
SHRI.ARJUN HARIKUMAR
SHRI.ANANTHU R MURALI

RespONDENTS/PETITIONER & 2ND RESPONDENT

1 KRISHNANKUTTY, AGED 67,
S/O OOTTOLY PUSHPANGATHAN, P.O. PUTHUKKAD,
THRISSUR, PIN - 680301



2025:KER:72453

FAO No.102 of 2024

2

**2 SADANANDAN,
AGED 72 YEARS, S/O KOLLARAVEETIL VELAYUDHAN,
KIZHAKKUMPATTUKARA DESOM, THRISSUR TALUK,
THRISSUR DISTRICT, PIN - 680005**

**BY ADVS.
SRI.S.SREEKUMAR (SR.)
SRI.PHILIP T.VARGHESE
SRI.THOMAS T.VARGHESE
SMT.ACHU SUBHA ABRAHAM
SHRI.SUJESH MENON V.B.
SMT.V.T.LITHA
SMT.K.R.MONISHA**

**THIS FIRST APPEAL FROM ORDERS HAVING COME UP FOR
ADMISSION ON 24.09.2025, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:**



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JUDGMENT

Dated this the 24th day of September, 2025

1. The Appellant is the Defendant No.1 in a suit for permanent prohibitory injunction. The Respondent No.1 filed the suit for permanent prohibitory injunction restraining the Defendants from doing anything offending his ownership and possession of the elephant by the name 'Oottoly Raman' in his possession and for other reliefs.
2. The Appeal is filed, challenging the Order dated 09.08.2024, passed by the Trial Court by which the Trial Court disposed of I.A. No.1/2024, filed by the Plaintiff for temporary injunction against the Defendants from taking forcible possession of the scheduled elephant, and I.A. No.6/2024 filed by Defendant No.1 to vacate the ad-interim Order of injunction. By the impugned Order, the Trial Court directed the parties to maintain status quo until final judgment or until further orders.



3. The short facts necessary for the disposal of this appeal are stated: One elephant originally named as 'Madhu' and now named as 'Raman' belonged to the Defendant No.2. The Defendant No.2 gifted the elephant to Mata Amritanandamayi Madom in the year 2001. The elephant had been in the possession of Defendant No.1, who was the Kalari Gurukkal of the Madom, till the year 2007. It was Defendant No.1 who had been looking after the elephant.
4. According to the Plaintiff, the elephant was entrusted back to the Defendant No.2 by the Madom as Ext.A1(a) Gift Deed dated 18.02.2017 when they found it difficult to control and manage the elephant and that the elephant came into his possession consequent to the execution of Ext.A1 Gift Deed dated 28.02.2017 executed by the Defendant No.2. Thus, the Plaintiff claims ownership of the elephant as per Ext.A1. It is the case of the Defendants that the elephant was entrusted with the Plaintiff only to look after the same and that the Plaintiff forged Exts.A1



and A1(a) to make a false claim of ownership over the elephant. At the instance of Defendant No.1, Crime No.1000/2023 was registered by the Police on 01.07.2023 against the Plaintiff under Sections 406 and 420 of the Indian Penal Code. In the said Crime, the Police seized the elephant symbolically and filed a Report before the Magistrate Court. The Defendant No.1 filed C.M.P. No.2146/2023 under Section 451 of the Code of Criminal Procedure seeking interim custody of the elephant and the same was dismissed by the JFCM, Karunagappally, as per Order dated 05.09.2023, finding, *inter alia*, that the subject matter of the petition is not seized and produced before the Court by the Investigating Officer to invoke Section 451 of the Cr.P.C. The said Order was challenged by the Defendant No.1 in this Court by filing Crl. M.C. No.7600/2023, and this Court, as per Order dated 20.11.2023, set aside the Order passed by the Magistrate Court in C.M.P. No.2146/2023 and directed the Magistrate



to consider the matter afresh in the light of the observations contained therein.

5. C.M.P. No.2146/2023 was again considered by the Magistrate's Court, and an Order was passed on 18.12.2023 granting interim custody of the elephant to Defendant No.1, subject to the conditions mentioned in the said Order. Immediately, the Plaintiff filed the present suit on 26.12.2023 before the Vacation Court, Thrissur, during the Christmas holidays and obtained an ex parte order of injunction against the Defendants from taking forcible possession of the elephant. Thereafter, the Plaintiff filed SLP (Criminal) Diary No.51164/2023 before the Hon'ble Supreme Court, challenging the Order of this Court in Crl. M.C. No.7600/2023 and the Hon'ble Supreme Court passed an Order dated 22.01.2024, directing the parties to maintain the status quo as regards the custody of the elephant till the next date of hearing.

6. The Defendant No.1 filed I.A. No.6/2024 to vacate the



injunction order and counter in I.A. No.1/2024. Accordingly, the matter was heard by the Trial Court, and the impugned Order was passed.

7. On the basis of the Order passed by the Civil Court and the Order of the Hon'ble Supreme Court, the custody of the elephant is still with the Plaintiff. The possession of the elephant with the Plaintiff is not disputed by the Defendants.
8. I heard Sri. C. Unnikrishnan, the learned counsel for the Appellant and Sri. Philip T. Varghese, the learned counsel for the Respondent No.1/Plaintiff.
9. Learned Counsel for the Appellant contended that the Plaintiff obtained the interim order of injunction from the Vacation Court by filing a Suit and the Interlocutory Application therein, suppressing the material facts with respect to the earlier litigations and orders therein before the Court. Since the Plaintiff has approached the Trial Court suppressing the material facts, the order of



injunction granted by the Trial Court should have been vacated, dismissing I.A. No.1/2024 and allowing I.A. No.6/2024. In the impugned Order, the Trial Court did not consider the suppression of material facts by the Plaintiff. The learned counsel cited the decisions of the Hon'ble Supreme Court in *S.P. Chengalvaraya Naidu v. Jagannath* [(1994) 1 SCC 1], *Prestige Lights Ltd. v. State Bank of India* [(2007) 8 SCC 449], *Vishnu Vardhan @ Vishnu Pradhan v. State of Uttar Pradesh* [2025 KHC 6630] and *Nidhi Kaim and Another v. State of Madhya Pradesh and Others* [(2017) 4 SCC 1] in support of his contentions.

10. On the other hand, the learned counsel for the Respondent No.1 contended that it is true that the Plaintiff could have disclosed the facts relating to the earlier litigation, but those facts are not material for a suit seeking injunction against taking forcible possession. It is a settled law that nobody can take forcible possession of any property from another person. The omission on the



part of the Plaintiff to disclose those facts should not be taken as a ground to vacate the interim order of status quo passed by the Trial Court, as the said order of status quo is fully justified and very much essential in the facts and circumstances of the present case. It is in evidence that the elephant is having continuous musth, unlike the other elephants, and it is difficult to control and manage the elephant by any person other than the Plaintiff. It is not in the interest of justice to disturb the custody of the elephant at this point in time. The learned counsel pointed out that the Plaintiff has been maintaining the elephant, expending huge amounts since February 2017. The Insurance Policy of the elephant is taken from time to time in his name. It would *prima facie* show that the Plaintiff is the owner of the elephant as per Ext.A1 Gift Deed. Considering the said fact, the Trial Court has passed only a status quo Order, which would not cause any prejudice to the Defendants and there is no need to interfere with



the impugned order.

11. I have considered the rival contention.

12. The suit is filed essentially against taking forcible possession of an elephant. The possession of the elephant has been admittedly with the Plaintiff for a long period. The parties are in dispute with respect to the nature of possession. The Plaintiff claims ownership on the basis of Exts.A1 and A1(a) Gift Deeds, which, according to the Defendants, are forged. The Defendants claim that the Plaintiff came into the possession of the elephant by way of a mere entrustment for looking after the same. Since the possession is with the Plaintiff, in normal circumstances, the Plaintiff is entitled to get an Order of temporary injunction against taking forcible possession by the Defendants, on the legal principles that everybody is bound by the Rule of Law and nobody shall take the law into his own hand and that nobody shall take possession of any property from another, otherwise than



through legal means. Nevertheless, if the Plaintiff has approached the Court with unclean hands or if the Plaintiff is guilty of suppression of material facts, the Court shall not extend its help to protect his rights.

13. The Plaintiff filed the present suit during the Christmas holidays before the Vacation Court and obtained an ad-interim injunction against the Defendants from taking forcible possession of the elephant. The Plaintiff suppressed all the proceedings till the date of the suit. Of course, the Plaintiff needs to state only material facts with respect to the relief sought. The material fact relating to a relief is a fact that might have changed the Order of the Court had it not been suppressed. The suit was filed when the Order of the Magistrate's Court dated 18.12.2023, granting interim custody of the elephant in favour of Defendant No.1, was subsisting. Whatever the suppression of the earlier litigations by the Plaintiff, the suppression of the Order of the Magistrate's Court dated



18.12.2023, granting interim custody of the elephant in favour of Defendant No.1, was very much material and relevant. The Plaintiff emergently moved the Vacation Court during Christmas Vacation and obtained an ex parte Order of temporary injunction immediately after the passing of Order of the Magistrate's Court dated 18.12.2023 in favour of the Defendant No.1. The Plaintiff deliberately suppressed the said Order fully knowing that if he had disclosed the said Order, the Court would not grant interim order of injunction in his favour. The mala fides on the part of the Plaintiff is obvious. If the said Order was not suppressed, I strongly doubt whether the Vacation Court would have passed an interim order of injunction on 26.12.2023. The suit was filed to circumvent the Order of the Magistrate's Court dated 18.12.2023 in favour of the Defendant No.1.

14. There are reasons to doubt the cause of action alleged in the Plaintiff also. It is revealed from the records that the



Defendants are attempting to obtain possession of the elephant through legal means. They never attempted to obtain possession forcefully. If they had any intention to obtain possession of the elephant forcefully, they would not have approached the Court for getting possession of the elephant. Since the subject matter is an elephant and since the elephant is having continuous musth as averred by the plaintiff, it is not possible to take possession of the same forcefully. Hence, *prima facie* there is every reason to doubt the cause of action projected in the suit.

15. The maxim is '***fraus et jus nunquam cohabitant***', which means fraud and justice never dwell together. When a person approaches the Court with unclean hands, suppressing the material facts, it is well settled that he should summarily be thrown out of the Court without granting any relief. In ***S.P. Chengalvaraya Naidu (supra)***, the Hon'ble Supreme Court held that where a



litigant deceives the Court by withholding documents that are vital to the case at hand to gain an advantage, he is guilty of playing fraud on the Court as well as on the opposite party. In *Prestige Lights Ltd. (supra)*, the Hon'ble Supreme Court held that, if there is suppression of material facts on the part of the applicant or twisted facts have been placed before the Court, the Court may refuse to entertain the petition and dismiss it without entering into the merits of the matter. In the recent decision of the Hon'ble Supreme Court in *Vishnu Vardhan @ Vishnu Pradhan (supra)*, it is held that when judicial orders are procured by subverting the judicial process through fraud and concealment of material facts, they cannot be permitted to stand as fraud unravels everything, and both the High Court order and Supreme Court judgment, being tainted by fraud, lack legal sanctity and validity; and that when the Court has been the victim of fraud, it's hands cannot be tied down by



procedural laws in a manner to defeat the interests and rights of other parties. In *Nidhi Kaim (supra)*, it is held that even the trivialist act of wrongdoing, based on a singular act of fraud, cannot be countenanced in the name of justice.

16. While passing the impugned Order, the Trial Court did not consider the suppression of material facts by the Plaintiff. The suppression made by the Plaintiff is very serious, which would disentitle him from obtaining any relief. The Trial Court ought not to have considered the matter on merits. The Trial Court ought to have denied the injunction and should have dismissed I.A. No.1/2024, taking note of the serious suppression made by the Plaintiff.

17. The learned Counsel for the Respondent No.1 prayed for a direction to the Trial Court to consider I.A. No.1/2024 afresh after vacating the Order. I am unable to entertain such a prayer from a party who has



approached the Court with unclean hands. In *Lazarus Estates Ltd. v. Beasley* [1956 (1) All E.R. 341], the consequences of fraud were determined by the Court of Appeal. In the said decision, Denning, L.J., had observed that no Court in this land will allow a person to keep an advantage which he has obtained by fraud; that no judgment of a Court, no order of a Minister, can be allowed to stand if it has been obtained by fraud; and that fraud unravels everything. After setting aside the impugned order on the ground of material suppression and fraud, relief cannot be granted to the Plaintiff, enabling him to obtain the same order and thereby retain the benefit of the order obtained by fraud.

18. In view of the said discussion, I am of the view that the impugned Order is liable to be set aside, dismissing I.A. No.1/2024 and allowing I.A. No.6/2024. It is ordered accordingly.



2025:KER:72453

FAO No.102 of 2024

17

19. It is made clear that the Trial Court shall dispose of the suit untrammelled by the observations contained herein.

Sd/-

**M.A.ABDUL HAKHIM
JUDGE**

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**APPENDIX OF FAO 102/2024****PETITIONER ANNEXURES**

- ANNEXURE A1** TRUE COPY OF THE OWNERSHIP CERTIFICATE DATED 30.07.2014 SHOWING THE OWNER OF THE PETITION SCHEDULE ELEPHANT AS MATA AMRITHANANDMAYI MADOM OF THE PETITION SCHEDULE ELEPHANT "RAMAN" ISSUED BY THE KERALA FOREST DEPARTMENT
- ANNEXURE A2** TRUE COPY OF THE IMPLANTATION MICROCHIP CERTIFICATE SHOWING THE ELEPHANT'S OWNER AS MATA AMRITHANANDMAYI MADOM
- ANNEXURE A3** ORIGINAL COPY OF THE AUTHORISATION LETTER FROM MATA AMRITHANANDMAYI MATH AUTHORISING THE PRESENT APPELLANT
- ANNEXURE A4** TRUE COPY OF THE RELEVANT PAGES OF THE DATA BOOK OF CAPTIVE ELEPHANT OF KERALA FOREST AND WILDLIFE DEPARTMENMT
- ANNEXURE A5** TRUE COPY OF THE FIR IN CRIME NO. 1000/2023 DATED 01.07.2023 BEFORE THE KARUNAGAPALLY POLICE STATION
- ANNEXURE A6** TRUE COPY OF THE PETITION FILED FOR INTERIM CUSTODY OF THE ELEPHANT BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE COURT, KARUNAGAPALLY
- ANNEXURE A7** TRUE COPY OF THE OBJECTION FILED BY THE RESPONDENT No.1 IN CMP 2146/2023
- ANNEXURE A8** TRUE COPY OF THE ORDER IN CMP NO 2146/2023 DATED 05.09.2023
- ANNEXURE A9** TRUE COPY OF THE ORDER IN CRL MC NO. 7600 OF 2023 DATED 20.11.2023 OF THIS HON'BLE COURT
- ANNEXURE A10** CERTIFIED COPY OF THE CONSEQUENTIAL ORDER DATED 18.12.2023 GRANTING INTERIM CUSTODY BY JFMC, KARUNAGAPALLY
- ANNEXURE A11** TRUE COPY OF THE OFFICIAL MEMORANDUM DATED 22.12.2023 ISSUED BY THE JFMC, KARUNAGAPALLY DIRECTING TO RELEASE THE ELEPHANT TO THE APPELLANT
- ANNEXURE A12** TRUE COPY OF THE ORDER DATED 22.01.2024 OF THE HON'BLE SUPREME COURT DIRECTING TO MAINTAIN STATUS QUO IN REGARD TO THE CUSTODY OF THE ELEPHANT I SLP NO.



2025:KER:72453

FAO No.102 of 2024

19

51164/2023

- ANNEXURE A13** TRUE COPY OF THE PLAINT IN O.S. 4/2024
BY THE RESPONDENT NO.1
- ANNEXURE A14** CERTIFIED COPY OF THE AD- INTERIM
INJUNCTION ORDER DATED 26.12.2023
ISSUED BY THE VACATION JUDGE, THRISSUR
- ANNEXURE A15** CERTIFIED COPY OF THE COUNTER FILED BY
THE Appellant AGAINST THE INJUNCTION
PETITION
- ANNEXURE A16** CERTIFIED COPY OF THE I.A. NO.6/2024
FOR VACATING THE AD-INTERIM INJUNCTION