

IN THE COURT OF THE MUNSIFF, KOTTARAKARA.
Present :- Smt. Sumey Chandran, B.Sc, LL.B., Munsiff.
Saturday the 29th day of February, 2020/10th day of Phalgunam, 1941.

Counter Claim in OS. No.324/2013
Between

Counter Claim Plaintiff:-
Defendant

Vimalkumar, S/o Maniyan,
Geetha Bhavan, Kudavattoor P.O.,
Odanavattom.

By Adv. K. Muraleedharan.

And

Counter Claim Defendants:-
Plaintiffs

- (1). Sasikumar, S/o Gopalan,
Thenguvelil Veedu, Kudavattoor P. O.,
Odanavattom.
- (2). Sadanandan, S/o Gopalan,
Thenguvelil Veedu, Kudavattoor P. O.,
Odanavattom.
- (3). G. Biju, S/o Gopalan,
Thenguvelil Veedu, Kudavattoor P. O.,
Odanavattom.

By Adv. S. Radhakrishnan Nair.

This counter claim is filed U/S 26, Order IX for fixation of boundary recovery of possession permanent prohibitory injunction and for mandatory injunction, coming on for hearing before me on 29.02.2020 and the court on the same day delivered the following:-

JUDGMENT

Counterclaim is for fixation of boundary recovery of possession permanent prohibitory injunction and for mandatory injunction.

Counter claim plaintiffs case is as follows:-

1. The counter claim plaintiff obtained 9 cents of property by virtue of Sale deed No.1868/2008 of SRO Pooyappally. The predecessors in title of the counter claim plaintiff was obtained the properties by virtue of Sale deed No.222/2000 of SRO Pooyappally. The property of the defendant is situated at a higher level of than the property of plaintiff. Plaintiff A schedule property situated on the western side of the Idakkadam -Odanavattom road. The suit has been filed by the plaintiff/Counter claim defendants suppressing the material facts. There is no Kavu as stated in the plaint is not situated in the plaint schedule property. There is no Kavu in the plaintiff A schedule property. It is false to state that on the eastern side of the plaintiff schedule property a pathway is stated. There is no pathway as stated in the plaintiff schedule property. It is false to state that the way leading towards that Bhadrakali Kavu. A concreted pathway having a width of 12 feet is leading towards house of the plaintiff from the public road. From 6 feet away from the aforementioned pathway a

Vilakkuthara has been constructed recently by the plaintiff. In order to reach the said Vilakuthara access can be through the aforementioned pathway. The Counter claim defendants have more than 1 Acres of property. They have no right in the 9 cents of property purchased by the plaintiff. When the counter claim plaintiff purchased property in the year 2008 there were separating boundary stones between the properties. The counter claim plaintiff has constructed during 2010 a compound wall to his properties. The counter claim defendants have been encroached $1\frac{3}{4}$ cents of property of the counter claim plaintiff in the circumstances the said property is to be recovered. Hence the counter claim.

2. Counter claim defendants did not file any written statement.

3. When the suit was listed for trial on 09.01.2020 the plaintiff was absent. Hence the suit was dismissed and counter claim.

4. Plaintiff was examined as PW1. Exts.A1 to A10 and Ext.C1 to C4 series were marked. From the evidence of counter claim plaintiff and from Exts.A1 to A10 and Exts.C1 to C4 series the plaintiff claim stands proved.

Hence the counter claim is decreed as follows.

1. The boundary of the property belongs to counter claim plaintiff shown by the commissioner by letters 'DKEFLID' is fixed as 'DKE' line on the southern side and 'EF' line on the eastern side and 'JF' line on the northern side and 'JD' line on the western side.

2. Counter claim plaintiff is entitled to recover 'KEFLK' shown by the commissioner in red colour in Exts.C3 plan.

3. The counter claim defendants are restrained by way of permanent prohibitory injunction from trespassing in to the counter claim schedule property, and from causing any damages to the property.

4. Ext.C3 plan shall form part of the decree.

5. The counter claim plaintiff is entitled to realise the costs of the suit from the counter claim defendants.

Dictated to the Confdl. Asst., transcribed and typed by her corrected and pronounced by me in open court on this the 29th day of February, 2020.

**SUMEY CHANDRAN
MUNSIFF**

APPENDIX:-

Exhibits marked for the counter claim plaintiff:-

- A1 : 10.10.2008 : Certified copy of Sale deed No.1868/2008.
- A2 : 25.06.2013 : Tax receipt No.2903612 issued from Village Office, Odanavattom.
- A3 : 04.02.2000 : Certified copy of Sale deed No.222/2000.
- A4 : 02.05.1984 : Certified copy of Sale deed No.871/1984.
- A5 : 05.02.1998 : Certified copy of Sale deed No.211/1998.
- A6 : 01.06.1981 : Certified copy of Will deed No.1017/81.
- A7 : 29.09.2014 : Letter to Advocate commissioner.
- A8 : 21.10.1985 : Certified copy of Security bond No.2012/1985.
- A9 : 09.08.2010 : Postmortem certificate.
- A10 : 09.08.2010 : First information report from Pooyappally Police Station.

Exhibit marked for the counter claim defendants:- Nil.

Court exhibits:-

- C1 : 05.11.2014 : Commission report prepared by Smt. P.T. Susamma, Advocate Commissioner.
- C2 : 05.11.2014 : Mahazar prepared by Smt. P.T. Susamma, Advocate Commissioner.

C3 : 05.11.2014 : Plan prepared by Sri. Gopinatha Pillai, Joint Commissioner.

C4 series : 05.11.2014 : Photographs C4 (a) to C4 (j)

Witness examined for counter claim plaintiff :-

PW1 : 09.01.2020 : Vimalkumar. M

Witness examined for counter claim defendants:- Nil.

Id/- Munsiff.

Typed by : Animole. T.C

Compared by :

MUNSIFF