

IN THE COURT OF THE PRINCIPAL MUNSIF, CHERTHALA

Present: Smt. Ashadevi V.S, Principal Munsiff

Tuesday, the 05th day of March, 2024/15th Phalgunam, 1945

OS No.53/2019

(Filed on 12.02.2019)

Plaintiff:-

P. A. Mathew Tharakan, aged 68,
S/o P .V Abraham Tharakan, Koottungal Parayil,
36/Anal River Dale, Eror North P O, Ernakulam.

By T . Jayakrishnan, Adv. Hormis Abraham,
Adv. M V Baiju & Adv. M Ratheesh

Defendants:

1. Mathai, aged about 40,
S/o Outha, Ilanjiyil, Ulavaipu Muri,
Ulavaipu P O, Thycattussery Village.
2. Martin, aged about 35,
S/o Outha, Ilanjiyil, Ulavaipu Muri,
Ulavaipu P O, Thycattussery Village.
3. John, aged about 48,
Ilanjiyil, West of Kollussery Shop,
Ulavaipu Muri, Ulavaipu P. O ,
Thycattussery village,

By Adv.C N Ponnappan & Adv. K K Mohankumar.

This suit having been finally heard on 28.02.2024 and the court on
05.03.2024 delivered the following:-

JUDGMENT

Suit for Permanent Prohibitory Injunction.

2. **Brief facts:-** Plaintiff schedule item No.1 property owned by the plaintiff. There was no road access to plaintiff schedule property. Hence the plaintiff's son purchased properties in between plaintiff schedule property and the nearest public road on the east. In 2018 the plaintiff succeeded in creating a cartable access to plaintiff schedule item No.1 property. Defendants are children of Kudikidappukaran in item No.1 property. The Kudikidppukaran died. Defendants are now residing in the kudikidppu. The road created has different width at different portions. After the construction of road, in order to protect the property from trespass plaintiff wants to put permanent boundary to item No.1 property. Thus fence was constructed on the southern and eastern portion of northern part of item No.1 property. Then at the time of constructing the fence on the southern part the 1st defendant interfered and obstructed the work. The 1st defendant intended to grab the southern part of item No.1. To satisfy his wish 1st

defendant manipulated evidence and constructed a new way starting from the portion where he resides in the kudikidappu. The suit filed for permanent prohibitory injunction to restrain the defendant from encroaching to plaint schedule property and from interfering with the boundary of plaint schedule property.

3. The defendants appeared and filed written statement with following contentions. The suit is barred under sections 34,41 and 42 of Specific Relief act. The defendants following their predecessors in interest have been in possession of 32 cents of the property. It is in the caretaker-ship of the father of defendants. Following him defendants are in possession of the property. The plaintiff is entitled only to 01 Acre 15 cents property in Sy No. 174/1. The defendants are in possession of 32 cents which lies in Sy 172/17 and 172/16. The said property has been developed and cultivated by the defendants. The plaint schedule property is the property with name 'Ilanjiyil Purayidom' which the defendant's father obtained under oral lease. The commissioner identified defendant's property as plaint schedule property. The pathway was

already in existence and it was not recently created by the 1st defendant. No derivation of title for B schedule in favour of the plaintiff. The son of the plaintiff purchased the properties in the brokerage of the 1st defendant. The attempt of the plaintiff is to avoid payment of brokerage fees. The fence around the plaintiff's property was constructed with the involvement of the 1st defendant. The plaintiff had given one key of the gate to 1st defendant. Thereafter plaintiff constructed compound wall. At that time the plaintiff informed that the caretaker-ship of the defendants is no longer needed in plaint schedule property and there was mediation talks in respect of the remuneration to be paid to the defendants but plaintiff did not obey the terms. Plaintiff has no right over B schedule. The suit is not properly valued and no court fee paid. The suit is frivolous and vexatious and is liable to be dismissed.

4. The plaintiff filed petition to amend the plaint to include the prayer for recovery of possession of item No.2 and also for Mandatory Injunction to remove the structures in item No.2.

5. The defendant filed Additional written statement with following contentions. The plaintiff or his predecessor in interest never obtained title over plaint schedule property. The sale proceedings in OS 37/1093 dated ME 1103 Dhanu 5 is illegal. The possession of the property was with the predecessor of the defendants. The made over Decree Holder who is the father of the plaintiff never recovered possession of the property from Ouseph Tharakan S/o Avira Tharakan. The plaintiff's father obtained oral lease of the property from Ouseph Tharakan and his such right as cultivating tenant became recognised under the Land Reforms Act. Thus the father of the plaintiff did not get any right from the Decree Holder in that case. The subsequent documents also sans any validity. The plaintiff now attempted to trespass to the property in the possession of the defendants. The plaintiff has no right to recover possession of item No.2 property or to the relief of mandatory in the suit. The possession of the defendants is not confined to any kudikidappu, it is a fraudulent proceedings done

behind the back of the defendants. Hence none of the reliefs can be allowed in favour of the plaintiffs.

6. The following issues raised for trial:

1. Are plaint schedule properties identifiable?
2. What is the right of plaintiff over plaint schedule properties?
3. Is the apprehension of plaintiff true and established?
4. Is he entitled to get decree of Permanent prohibitory Injunction as prayed for ?
5. Reliefs and costs?

7. Additional Issues

6. Did the plaintiffs have obtained valid title over the property by virtue of the Court Sale in OS 37/1093?
7. Did the defendants have bonafide claim of permanent tenancy over plaint schedule property?
8. Did the defendants exclude the plaintiff in their possession of plaint schedule property?

8. From the side of plaintiffs, plaintiff examined as PW1. Exts A1 to A7 , C1 , C1(a), C2, C2(a) ,C3 and C3(a) were marked.

9. Heard.

10. The plaintiff proved his title over plaint schedule property. The defendants and their father were caretakers of plaint schedule item No.2 property. They also claimed adverse possession over item No.2 property. None of such claims were proved. The properties were identified by Ext C1, C1 (a) report and plan. It is clear from the commissioner report that the defendants made a cattle shed encroaching to item No.2. Thus the plaintiff proved the facts averred in the plaint and he is entitled to the reliefs sought in the plaint.

In the result, Suit decreed as follows:-

1. The defendants and all under them are hereby restrained from interfering in any way with the peaceful enjoyment of plaint schedule property by plaintiff and from demolishing the existing compound wall and also from interfering with the construction of fencing or

compound wall along the remaining boundaries of plaintiff schedule property.

2. Defendants are hereby directed by a Decree of Mandatory Injunction to remove item No.3 structures from item No.2 property and to recover possession of item No.2 within one month from today failing which the plaintiff shall allowed to recover the possession through the process of the Court at the costs of defendants.
3. Plaintiff is also allowed with the costs of the suit.

(Dictated to the Confidential Asst., typed by her, corrected by me and pronounced in the open Court on this the 5th day of March,2024.)

**ASHA DEVI. V.S,
PRINCIPAL MUNSIF.**

APPENDIX:

Witness for the Plaintiffs:-

PW1 20.02.2024 P A Mathew, Tharakan

Exhibits for the Plaintiffs:-

A1 Certified copy of partition deed No.1127 /00, dated 03.04.2000
 A2 Tax receipt No. 0766702 issued from Thykattussery Village Office, dated 18.05.2018
 A3 Sale Certificate in OS No. 37/1093 M E of District Court, Alappuzha

- A4 Certified copy of Sale deed No.921/1120 M E
- A5 Certified copy of partition deed No.927/1120 M E
- A6 Letter of certification issued by Thykattussery Grama Panchayath to the plaintiff, dated 20.11.2021
- A7 Information accessed under right to Information Act from Land Tribunal Cherthala pertaining to OA No.192/1971 of Thykattussery Land Tribunal.

Witness & Exhibit for the Defendants:- Nil

Court Exhibits:-

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| C1 | 16.10.2023 | Commission report prepared by
Adv. Martin Antony |
| C1(a) | 17.07.2023 | Survey Plan prepared by
G.Soman Rtd. Surveyor |
| C2 | 12.03.2019 | Commission report prepared by
Adv. P Sinimol |
| C2(a) | 12.03.2019 | Plan prepared by Adv. P Sinimol |
| C3 | 07.06.2019 | Commission report prepared by
Adv. P Sinimol |
| C3(a) | 07.06.2019 | Plan prepared by Adv. P Sinimol |

PRINCIPAL MUNSIF

Fair Copy of Judgment in
OS.53/2019 dated 05.03.2024.