

IN THE COURT OF THE MUNSIFF, HARIPAD
Present: Sri. Doney Thomas Varghese , B.A.LL.B(Hons:).Munsiff
Wednesday 14th March 2018 /23rd Phalguna 1939

O.S.No. 35/2014
(Filed on 22.01.2014)

Plaintiff: Sarojam, aged 54 years
D/o Chembaka Kutty,
Pranavam,
(Muthira Parambil Kizhakkethil)
Ramancherry Muri,
Arattupuzha Village.
By Adv. Sri.R. Aravindakshan

Defendants: 1. Neelambaran, aged 70 years
S/o Neelakandan,
Muthiraparambil Kizhakkethil,
Ramancherry Muri,
Arattupuzha Village.

2. Cilomany aged 53 years
D/o Janaki,
Seema Bhavanam,
(Muthiraparambil) of -do-
D1 & D2 Set exparte.

This suit having been finally heard on 14..03..2018 and the court on the same day delivered the following:-

J U D G M E N T

Suit for declaration, fixation of boundary and permanent prohibitory injunction.

2. The case of the plaintiff in brief is as follows: Plaintiff is the absolute owner in possession of plaint 'A' schedule property by virtue of gift deed No.758/1980 and settlement deed No.372/1998. Plaint 'B' schedule property of 1st defendant situates on the immediate southern side of plaint 'A' schedule property. On several occasions plaintiff asked the 1st defendant to co-operate for putting up of fencing separating

these properties. But the 1st defendant is raising frivolous and vexatious claims and as such he is not co-operating for fixing the boundary. Plaintiff 'C' schedule property belonging to the 3rd defendant situates on the south-western side of plaintiff 'B' schedule property. There exists a public road on the immediate southern side of plaintiff 'C' schedule property. There exists plaintiff 'D' schedule way to a width of 2 metres and a length of 18 metres originating from plaintiff 'A' schedule property through plaintiff 'B' and 'C' schedule properties to reach the southern public way. Plaintiff has been using the said way openly, peaceably, continuously, without interruption, as of right and as an easement since 26.02.1980 and as such he has acquired prescriptive right of easement over the said way. Defendants are not justified in obstructing the plaintiff from using plaintiff 'D' schedule way. When the plaintiff has asked the 1st defendant to turn up for determining the boundary separating plaintiff 'A' and 'B' schedule properties he went to the extent of raising false claims against plaintiff 'A' schedule property. He openly declared his plan to trespass into a portion of plaintiff 'A' schedule property. Defendants have no manner of right or interest over plaintiff 'A' schedule property. On 12.01.2014 defendants have openly declared their plan to obstruct the use of plaintiff 'D' schedule way by the plaintiff. If the defendants are not restrained from such acts it will result in irreparable loss and injury to the plaintiff. Hence this suit for declaring the title and possession of the plaintiff over plaintiff 'A' schedule property, for declaring prescriptive right of easement of the plaintiff over plaintiff 'D' schedule way, for fixing the boundary separating plaintiff 'A' and 'B' schedule properties and to put up fencing on the boundary and for a permanent prohibitory injunction restraining the defendants from obstructing the

use of plaint 'D' schedule way or from trespassing into plaint 'A' schedule property or from committing any waste therein.

3. Though the defendants entered appearance, subsequently they failed to turn up and accordingly they were set exparte.

4. From the plaintiff's side, he was examined as PW1 and Exts.A1 to A3 and Exts.C1 series (a) to (c) and C2 series (a) to (c) were marked.

5. Heard the learned counsel for the plaintiff and the only point that arise for consideration is whether the plaintiff is entitled to the reliefs sought for in the suit.

6. PW1 has filed affidavit in lieu of examination in chief which is in consonance with the averments in the plaint. From the uncontroverted testimony of PW1 and Exts.A1 to A3 and Exts.C1 series (a) to (c) and C2(a) to (c) documents plaintiff has established his case warranting the grant of the reliefs sought for in the suit. Point is answered in the affirmative.

In the result, suit decreed with costs. Title and possession of the plaintiff over plaint 'A' schedule property is declared. Prescriptive right of easement of the plaintiff over plaint 'D' schedule way is also declared. "O-N" line in Ext.C2(c) plan is fixed as the boundary separating plaint 'A' and 'B' schedule properties. Plaintiff is entitled to put up compound wall or fencing on the said boundary. Permanent prohibitory injunction is granted restraining the defendants from trespassing into plaint 'A' schedule property or from committing any waste therein. They are also restrained from obstructing the use of plaint 'D' schedule way by the plaintiff. Ext.C2(c) plan shall form part of the decree.

Dictated to the Confl. Asst., transcribed and typed by her, corrected and pronounced by me in open court on this the 14th day of March, 2018.

Sd/-
DONEY THOMAS VARGHESE
MUNSIFF

APPENDIX:

Exhibits for the Plaintiffs:

A1	26.02.1980	Photocopy of Gift deed No. 758/'80
A2	21.02.1998	Certified copy of settlement deed No. 372/98
A3	30.12.2012	Tax receipt

Exhibits for the Defendants: Nil

Court Exhibits

C1(a)	09.10.2014	Commissioner's Mahazar prepared by Advocate Sri.S. Narayanan Nampoothiri
C1(b)	"	Commissioner's report of -do-
C1(c)	"	Rough sketch of -do-
C2(a)	13.06.2017	Commissioner's Mahazar prepared by Advocate Sri.M. Hareesh
C2(b)	"	Commissioner's report of -do-
C2(c)	"	Plan prepared by Sri.V. Vijayan Nair (Panel Surveyor).

Witness for the Plaintiff

PW1	14.03.2018	Sarojam
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Witness for the Defendants : Nil

Id/-
MUNSIFF

//True copy//

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Typed by :BA
Compd: by :

