

**IN THE COURT OF THE MUNSIFF, HARIPAD.
Present: Smt. Maneesha.K. Bhadran, Munsiff
Tuesday, 22nd October, 2024/30th Aswina,1946**

IA.No.1/2023 in OS. No.415/2023

Filed on 29.11.2023

Petitioner/ Plaintiff:

Silvy Verghis @ Silvy Verghis Maliykel,
aged 59 years, D/o Verghis,
Varghese Villa from Avanakkattu Veedu,
Karuvatta North, Karuvatta Village,
Alappuzha District.

By Adv. P. S. Zameer

Counter Petitioner/ Defendant:

Joy Verghis @ M. V. Joy, aged 49 years,
S/o Verghis, now residing at E1/6,
Municipal Building, Ramabai Ambedkar,
Udhyan, Sion, Kiliwada, Mumbai,
Maharashtra, 400037 from
Avanakkattu Veedu, Karuvatta North,
Karuvatta Village, Alappuzha District.

By Adv. G. Harikrishnan

This petition having been finally heard on 09.10.2024 and the court on 22.10.2024 passed the following:

ORDER

Petition for temporary injunction.

2. **Petition averments in brief are as follows:-** Suit is for declaration and permanent prohibitory injunction. Defendant is the younger brother of plaintiff and they were residing in Mumbai.

Petitioner sold her flat in Maharashtra for Rs.12,75,000/- on 10.02.2007. While so defendant insisted her to purchase plaint schedule property near the house of defendant's wife. Plaintiff agreed to purchase the property and paid Rs.2,00,000/- as advance to defendant. As per plaintiff's instruction, Smt. Lizzy Tomy, sister of defendant's wife entered into sale agreement with the owners for a total sale consideration of Rs.7,00,000/-. On 19.01.2009 plaintiff withdrew money from her account and paid Rs.2,00,000/- to defendant and Rs.3,00,000/- to his wife. On 21.04.2009 Rs.3,00,000/- was entrusted to defendant towards balance sale consideration and registration expenses. On 11.05.2009 plaintiff appeared before the office of document writer and gave her thumb impression and photograph for executing sale deed. However, defendant registered sale deed no.1057/2007 in the joint names of himself and plaintiff. Pursuant to the sale deed plaintiff is in absolute possession and enjoyment of plaint schedule property. Upon refusal of plaintiff to give Rs.5,00,000/- to defendant for his business, he and his wife assaulted and manhandled plaintiff.

Petition under domestic violence act is pending before Bombay Curia Metropolitan court. The name of defendant was included in sale deed no.1057/2007 out of plaintiff's love and affection towards him as her younger brother. Now defendant is attempting to trespass into plaint schedule property and take possession of the same. Hence the petition for temporary injunction restraining respondent from trespassing into plaint schedule property, manhandling plaintiff and taking forcible possession of the property.

3. Respondent filed objection contending as follows:- Petitioner is not maintainable and without any bonafides. The sale of flat is admitted. But the said flat was purchased using the funds of the defendant also. The sale agreement was executed between the owners of the property and the sister of defendant's wife, Lissy Tomy. The alleged withdrawals of plaintiff from her bank account is not known to defendant. Even though the total sale consideration is shown in sale deed No.1057/2007 of Haripad SRO as Rs.7,00,000/-, the actual consideration was Rs.16,00,000/-. The said

amount was jointly paid by plaintiff and defendant. Plaintiff was fully aware of the registration of the said sale deed in the joint names of plaintiff and defendant. An old residential building was in existence in plaintiff scheduled property at the time of execution of sale deed. The said house was demolished and a new house was constructed by defendant expending his funds. It is admitted that defendant is now residing in the residential building in plaintiff schedule property. However, two bed rooms in the first floor, and one bed room on the ground floor are in the absolute possession of defendant wherein furniture and utensils are kept. It is admitted that proceedings under protection of women from domestic violence act is initiated by plaintiff against defendant. Plaintiff is not permitting defendant to enter into plaintiff schedule property jointly owned by him. Hence the petition be dismissed.

4. The following points arise for consideration.

1. Whether petitioner has made out a prima-facie case in support of the claim for interim injunction?

2. In whose favour the balance of convenience exist?
3. Whether the petitioner will be put to irreparable loss and injury if an order of injunction is not passed?
4. Whether the petitioner is entitled to get an interim injunction as prayed for?
5. Reliefs and costs?

5. On the side of the petitioner, Exts. A1 to A7 and C1 series were marked. No documents were marked from the side of respondent.

6. Heard both sides.

7. **Point Nos. 1 to 4:-** Suit is one for declaration that plaintiff has absolute right, title and possession over plaint schedule property and the residential building therein. Plaintiff also seeks for a permanent prohibitory injunction restraining defendant from trespassing into plaint schedule property, taking possession of the same, creating any charge or encumbrance over the same and manhandling her.

8. The contention of plaintiff is that she is the absolute owner of plaint schedule property obtained by sale deed no.1057/2007 and has paid the entire sale consideration. It is further contented that out of love and affection towards defendant, her younger brother, his name was included in the sale deed. Defendant is now attempting to trespass into plaint schedule property in her exclusive possession. Defendant on the other hand contented that he is the joint owner of the property and has expended funds for constructing the residential building in plaint schedule property.

9. Ext. A1 is the copy of sale deed no.1057/2009 of Haripad SRO. The same would show that plaint schedule property was obtained by plaintiff and defendant jointly for a total sale consideration of Rs.7,00,000/-. Ext.A2 property tax receipt of plaint schedule property would show plaintiff and defendant as the owners. Ext.A3 is the copy of document with respect to sale of the flat of plaintiff. Ext. A4 is the copy of Aadhar card of plaintiff.

Ext.A6 tax receipt would show that plaint schedule property is mutated in the names of plaintiff and defendant. Ext.A5 is the copy of the account statement of plaintiff from 01.12.2006 to 31.05.2011. Ext.A7 is the copy of agreement for sale of plaint schedule property executed in favour of Lizzy Tomy. Ext.C1 commission report has identified plaint schedule property and the residential building therein.

10. The static case of plaintiff is that she is the absolute owner in possession and enjoyment of plaint schedule property. However I am unable to accept the same as plaint schedule property was jointly purchased by plaintiff and defendant as per Ext.A1. Ext.A6 would show that they have jointly mutated plaint schedule property in their names. It is well settled that all the co-owners have equal rights and coordinate interest in the property though their shares may be either fixed or indeterminate. Every co-owner has a right to enjoy the possession equally to that of co-owner. The case of plaintiff that name of defendant was included in the sale

deed out of her love and affection towards him is a matter of evidence which has to be ascertained after trial.

11. In light of the above discussion I am satisfied that plaintiff has failed to establish a prima facie case that she is the absolute owner in possession of plaint schedule property. Plaintiff will not suffer irreparable injury if she is not granted interim relief. On the other hand if plaintiff is granted the interim relief, defendant the co owner in joint possession of plaint schedule property will be denuded from enjoying his joint property. Further the balance of convenience is also not in favour of plaintiff. Accordingly I find no merit in the above petition.

12. **Point No.5:-** Considering the finding on point No. 1 to 4, the petition is liable to be dismissed. In the facts and circumstances of the case, parties are directed to suffer their respective costs.

In the result,

- 1) Petition is dismissed. Interim order of injunction stands vacated.

- 2) Considering the facts and circumstances of the case,
parties are directed to bear their respective costs.

Dictated to the Confidential Assistant, typed by her, corrected by me and pronounced in Open Court on this the 22nd day of October, 2024.

Sd/-

Maneesha K Bhadran

Munsiff.

APPENDIX-

Exhibits for the Petitioner

| | | |
|----|------------|---|
| A1 | 11-05-2019 | Copy of sale deed No. 1057/09 SRO , Haripad. |
| A2 | 12-05-2023 | Copy of property tax receipt Karuvatta Grama Panchayath. |
| A3 | | Copy of Agreement for Re- sale of Flat No.601/A wing 6 th floor dated 10 th February 2007. |
| A4 | | Copy of Adhar card No .745547147388. (Silvy Verghis Maliykel) |
| A5 | 29-03-2023 | Copy of Bank statement of Account Punjab And Maharashtra Co- opertative Bank Ltd. Sion from 28/11/2008 to 22-05-2009. |
| A6 | 12-05-2023 | Copy of Tax receipt, Village office Karuvatta. |
| A7 | 07-11-2008 | Copy of Agreement for sale. |

Exhibits for the Respondent : Nil

Court Exhibits

| | | |
|--------|------------|--|
| C1 | 01-12-2023 | Mahazar |
| C1 (a) | 01-12-2023 | Commission Report submitted by Adv. Vijayasree. V. V. |
| C1 (c) | 01-12-2023 | Rough Sketch. |

Witness for the Petitioner:- Nil

Witness for the Respondent :- Nil

Id/-
Munsiff.

