

IN THE COURT OF THE MUNSIFF, KAYAMKULAM

Present: Sri.Shanavas.A, Munsiff

Monday the 5th day of December 2022/14th Agrahayana 1944

IA. 1/2022 in ORIGINAL SUIT. 98/2022
(Filed on 11.03.2022)

**Petitioner/
Plaintiff:**

Rajeswary, aged 47 years,
W/o.Sucheendra Babu,
Sucheendram,
Puthuppally Thekkum muri,
Puthuppally Village.

(By Adv.Sri.A.Sreepriya)

**Respondents
Defendants:**

1. Mohanan, aged 67 years,
S/o.Kuttappa panicker,
Thonduthara Padeettathil,
Vadakku Kochumuri,
Govindamuttom P.O,
Puthuppally Village.
2. Jagdamma aged 61 years,
W/o.Mohanan,
Thonduthara Padeettathil,
Vadakku Kochumuri,
Govindamuttom P.O,
Puthuppally Village.

(By Adv.Sri.D.Biju)

This petition is filed Under Order 39 Rule 1 and Section 151 of Civil Procedure Code and coming on for final hearing before me on 24.11.2022 in the presence of the counsel for both sides and having been stood over for consideration till 05.12.2022 and the court on the same day passed the following.

ORDER

This is an order in a petition filed under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908 for a temporary injunction.

2. The gist of averments in the petition are as follows:- The petitioner is the plaintiff in the suit. The petitioner is the owner-in-possession of plaint A schedule property ad-measuring 23.70 ares comprised in re-survey No. 85 of Puthuppally Village by virtue of settlement deed No. 1698/2021 of Sub Registrar's Office, Kayamkulam. Plaint A schedule property belonged to the father of the plaintiff. As he died, the property was devolved upon the heirs of the father of the plaintiff. They had executed the above settlement deed in favour of the plaintiff. In the year 1980, there were suits with regard to the plaint schedule property. Those suits were disposed in favour of the predecessors of the plaintiff. As the petitioner and other legal heirs were not in a position to visit the plaint schedule property routinely, in the

year 2000, the respondents trespassed into plaintiff A schedule property and erected a temporary shed in the northwestern corner of plaintiff A schedule property and started a tea shop therein. Though the respondents were asked to vacate the encroachment by the petitioner, due to the intervention of some mediators, the respondents were allowed to continue till they find out another place. Meanwhile, the respondents attempted to convert the temporary shed into a permanent structure. That was obstructed by the plaintiff and other legal heirs. Accordingly, respondents filed O.S.No. 95/2009 for declaration of kudikidappu right and for injunction. The encroached shed scheduled herein as plaintiff B schedule. The respondents have houses of their own and another property near to the plaintiff schedule property. In O.S.No. 95/2009, the petitioner entered appearance and contested the same. As per the decision of the Land Tribunal on 06.09.2021, the respondents had no kudikidappu right in the plaintiff schedule property. Thereafter, on 03.02.2022, this court dismissed O.S.No. 95/2009. The respondents are trying to encroach more portion of plaintiff A schedule property. They tried to get water connection to the property from the local authority. The timely intervention of the petitioner caused the respondents from

succeeding their attempt. The respondents are committing waste in the plaint schedule property. They even tried to remove soil from the plaint schedule property. They also making problems to the petitioner when the petitioner reached there for plucking coconuts during February 2022. The respondents have no right over the plaint schedule property. The petitioner is the de jure owner of the plaint schedule property. The respondents have to be evicted from the plaint schedule property. The petitioner is having a prima facie case. If the injunction is refused, the petitioner would cause irreparable injuries and untold hardships. Therefore, the petitioner sought to restrain the respondents from further encroaching into plaint A schedule property or from committing any acts of waste therein.

3. The respondent appeared and filed objection contending inter alia as follows:- The petition is not maintainable either in law or on facts. The petitioner is put to strict proof regarding the averments in paragraph Nos. 1 and 2 of the petition. The averments in paragraph No. 3 of the petition are opposed to facts. On the northwestern side of plaint A schedule property, father of the respondents Sri. Kuttappan constructed a homestead (ഒല്ലക്കൂട) in the year 1966 and started his

residence therein. After his demise, the respondents and their family have been residing therein and conducting the business. The above homestead has been annually maintained. Father of the plaintiff filed a suit before this court as O.S.No. 147/1995. It is stated in the petition that the shed constructed during the year 2000 is false. Since the petitioner and some other hooligans tried to evict the respondents from the plaint schedule property, he approached the court with O.S.No. 95/2009. The respondents have been in possession of 10 cents from plaint A schedule property. They are possessing and enjoying the same since 1966. During that period, the father of the respondents planted several plants and trees including coconut tree, mango tree, mahogany, Portia tree etc. Now, the plants are having 45 years age or more. Besides that, other cultivations like Taro, Elephant yam, Violet yam etc. were also there. After the demise of the father of the respondents, respondent Nos. 1 and 2 are maintaining and cultivating the above 10 cents. In fact, the proceedings taken before the Land Tribunal was influenced by the petitioner. So that, the revenue authorities passed an order against respondent in a clandestine manner. The respondents never trespassed into plaint A schedule property except the portion where they are

enjoying and possessing. On 14.11.1985, the electricity connection was given in the name of 1st respondent at the shed in plaint A schedule property. The 1st respondent was granted ration card from the address of plaint A schedule property and he has been paying basic tax in Devikulangara Gramapanchayat and the name of the assessee is none other than the 1st respondent. The petitioner is residing adjacent to plaint A schedule property. The respondents never attempted to usufructs from the property except the 10 cents of property. The respondents have right over 10 cents of property. The petitioner has no right over the above 10 cents of land which is in exclusive possession and enjoyment of the plaintiff. If the petitioner has any right over 10 cents of property, it had lost due to adverse possession as the respondents have been possessing the above 10 cents since 1966. No property scheduled as B schedule in the plaint. The cause of action alleged by the petitioner is false. There is no prima facie case against the respondents. On all these accounts, the respondents sought to dismiss the petition.

4. The following points were formulated for consideration:-

1. Whether the petitioner has made out a prima facie case?

2. In whose favour, balance of convenience lies?
3. Whether the petitioner would suffer irreparable injury and loss, if order of injunction is refused?
4. Whether the petitioner is are entitled to an injunction as prayed for ?
5. Reliefs and costs?

5. Exts. A1 to A4 were marked on the side of the petitioner for reference. Exts. B1 to B6 were marked on the side of the respondents for reference. Exts. C1 and C1(a) marked as court exhibits. Heard both the sides.

6. **Point Nos. 1 to 4:-** For the sake of convenience and brevity, these points are considered together. The petitioner herein seeking for an injunction restraining the respondents from further encroaching into plaint A schedule property and from committing acts of waste therein. In order to prove the right over plaint A schedule property, the petitioner marked for reference Exts. A1 and A2 documents. Rather, the right over plaint A schedule property has not been disputed by the respondents. Ext. A1 is the settlement deed, which was executed in the year 2021 to the petitioner by the legal heirs of deceased Vamadeva Panicker, who is the father of the petitioner. Ext. A2 is the basic tax receipt of plaint A schedule property, which stands in the name of the

petitioner. The petitioner, who is the owner of plaint A schedule property, complaining that the respondents encroached some portion on the northwestern side of plaint A schedule property, ad-measuring about 2 cents, which is scheduled herein as plaint B schedule property and shed therein. According to the petitioner, there were number of litigations regarding the kudikidappu right over plaint B schedule property etc. It is stated that a suit was filed by the respondents claiming right of kudikidappu over plaint B schedule property as O.S.No. 95/2009. As per the decision of the Land Tribunal on 06.09.2021, the right of kudikidappu of the respondents were rejected by the Land Tribunal. Subsequently, the suit was dismissed by this court. Ext. A4 is the photographs of the shed in plaint B schedule property. The alleged commit of waste is also seen in the photographs, which were produced along with the petition. Thus, the petitioner seeking for an order restraining the respondents from further encroaching into plaint A schedule property. The contention put up by the respondents is that their predecessor filed a suit before this court as O.S.No. 147/1995. The copy of plaint in O.S.No. 147/1995 was marked as Ext. B1. It is contended that in a thatched shed on the northwestern side of plaint A

schedule property, the predecessors of the respondents were residing. In continuation of the above right of the respondents, the respondents are also continuing with the possession and enjoyment of plaint B schedule property and shed therein. It is also contended that the respondents filed O.S.No. 95/2009 before this court against the forceful eviction of the respondents by the petitioner. Thereafter, they had produced the documents, which shows that the ration card of the respondents bearing the address of the homestead in plaint B schedule property. Ext. B3 is the ownership certificate, which shows that the 1st respondent is the owner of building bearing No. II/428 of Devikulangara Gramapanchayat, which is the homestead in plaint B schedule property. Ext. B4 is the letter issued by the Secretary Devikulangara Gramapanchayat to Assistant Engineer, Kerala Water Authority, Kayamkulam regarding the provision of water connection to the 1st respondent. Ext. B5 is the letter issued to Assistant Director, Panchayat by the Secretary, Devikulangara Gramapanchayat for providing water connection in a petition filed by the 1st respondent. Ext. B6 is the report of the Senior Superintendent Electrical Section, Kayamkulam. Exts. C1 and C1(a) filed by the commissioner clearly speaks the details of plaint

A and B schedule properties and the fact of residence of the respondents in plaint B schedule property as well.

7. It is not at issue regarding the ownership of plaint A schedule property by the petitioner. On the other hand, the respondents claiming right of kudikidappu over 10 cents of property on the northwestern portion of plaint A schedule property. The claim of the petitioner is that the respondents had illegally possessing two cents of property. In Ext. A3, it is seen that the respondents claiming right over 10 cents of property. In Ext. B1 also, which is the copy of the plaint in O.S.No. 147/1995, filed by the predecessor of the petitioner, for declaration of the right of the property and stated that the predecessor of the respondents was permitted on the northwestern side of plaint A schedule property to put up a homestead. Ext. A3 shows that the reference made by this court regarding the right of kudikidappu to the Land Tribunal was disposed by Ext. A3 order. The right was declined by the Land Tribunal holding that there were no documents produced by the respondents to prove that their predecessor had kudikidappu right over the northwestern side of plaint A schedule property. Subsequently, the suit was dismissed by this court. But, it was not on merit. It was

dismissed for default due to non-prosecution on the side of the respondents. It is seen that there is a restoration petition is pending for disposal in O.S.No. 95/2009. Regarding the possession of some portion on the northwestern side of plaint A schedule property by the respondents have not disputed. But, the extent has to be ascertained. According to the petitioner, it is only 2 cents of property and a thatched shed therein. It can be seen from Ext. A3 also that the respondents' claim is 10 cents. In the objection also, they stated that it is 10 cents. The respondents seeking that they are not intending to further trespass upon plaint A schedule property. They have only right of kudikidappu over the northwestern portion of plaint A schedule property. It is seen that without demarcating the particular portion, which has been possessed and enjoyed by the respondents herein, it is not possible to prohibit the respondents from trespassing further into plaint A schedule property. The conflict between the petitioner and respondents will be adjudicated only after demarcating and measuring out the property. Obviously, O.S.No. 95/2009 filed by the respondents, now not on file, which was dismissed by this court on default. However, the right claimed by the respondents was declined by the Land Tribunal by Ext.

A3 order. The document produced by the respondents and Exts. C1 and C1(a) speaks that the respondents are in possession of some portion of the northwestern side of plaint A schedule property. Regarding the extent, there is a dispute. If this court is inclined to allow this petition without demarcating the right claimed by the respondents, it will cause greater hardships to the respondents. It is true that the respondents did not prove that they had kudikidappu right over the portion on the northwestern side of plaint A schedule property. Still, they have been in possession of the northwestern portion of plaint A schedule property. It is trite that possession is in ninth point of law. The possessory right also heritable, divisible and transferable. So, the right of the respondents also looked after by this court as the claim of the respondents is that they have been enjoying the same in continuation of the right of their predecessor. Therefore, any order passed by this court in this petition will adversely affect the right of the respondents. Only after demarcation of the portion, where the respondents claimed right, the conflict will be settled subject to the final outcome of the suits instituted by parties. On all these grounds, the petitioner failed to make out a prima facie case. Balance of convenience is also not in her favour. The

petitioner will not put to irreparable injuries and untold hardships, if the injunction is refused. Hence point Nos. 1 to 4 are found against the petitioner.

8. **Point No. 5 :-** In view of my discussions and findings on point Nos. 1 to 4, the petition is liable to be dismissed.

In the result, the petition stands dismissed. There is no order as to costs.

(Dictated to the confidential assistant, transcribed and typed by her, corrected and pronounced by me in open court on 05th day of December, 2022.)

Sd/-
SHANAVAS.A
MUNSIF

APPENDIX

Exhibits for the Petitioner/ Plaintiff:

- | | | | |
|-----|------------|---|--|
| A1. | 02.11.2021 | : | Copy of settlement deed No.1698/2 of Sub Registrar's office, Kayamkulam. |
| A2. | 25.11.2021 | : | Tax receipt of Puthuppally Village office. |
| A3. | 06.09.2021 | : | Order issued from Land Tribunal, Karthikappally. |
| A4. | --- | : | Photographs. |

Exhibits for the Respondents/ Defendants:

- | | | | |
|-----|-----|---|------------------------------|
| B1. | --- | : | Copy of plaint in OS.147/95. |
|-----|-----|---|------------------------------|

- B2. --- : Copy of Ration Card.
- B3. 13.08.2019 : Copy of Ownership Certificate.
- B4. 29.03.2021 : Letter issued from
Devikulangara Panchayath.
- B5. 26.04.2022 : Letter issued from
Devikulangara Panchayath.
- B6. --- : Reply notice from
Public Information Officer,
Electrical Section,
Kayamkulam West.
- Witness for Both sides : Nil.
- Court Exhibits:
- C1. 08.04.2022 : Commission report prepared by
Adv. Commissioner,
Smt.P. Amritha.
- C1(a). 08.04.2022 : Rough Sketch prepared by
Adv. Commissioner,
Smt.P. Amritha.

Sd/-
MUNSIFF

// True copy //

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Typed by: Shafeek
Compd by:

Order in IA.1/2022
in OS No.98/2022,
Dated.05/12/2022.