

IN THE COURT OF THE MUNSIFF, KAYAMKULAM

Present: Smt.Aneesa.A, Munsiff

Friday the 13th day of December 2024/22nd Agrahayana, 1946

IA. 10/2024 in ORIGINAL SUIT.110/2021

(Filed on 18.11.2024)

Petitioner/Plaintiff:

Jayaprasad, aged 51 yrs,
S/o.Padmanabha Pillai,
Kuttitharayil,
Peringala muri,
Kayamkulam Village.

(By Adv.S.Remanan Pillai)

Cr. Petitioner/Defendant:

Travancore Devaswom Board,
Rep.by its Secretary,
Head Quarters of TDB,
Kawdiar, Nandancodu,
Thiruvananthapuram.

(By Adv.R.Raveendranath)

This petition is filed Under Order 18 Rule 17 r/w Section 151 of the Civil Procedure Code 1908 and coming on for hearing on 13.12.2024 and the court on the same day passed the following.

ORDER

This is an order in a petition filed under Order XVIII, Rule 17 and s. 151 of the Code of Civil Procedure, 1908 for re-opening the evidence of the defendant.

2. The gist of averments in the petition are as follows:-
Petitioner is the plaintiff in the suit. The suit is filed for declaration and permanent prohibitory injunction against the defendant. The plaint schedule property having an extent of 1.62 ares formed part and parcel of 12 cents of property comprised in old survey No. 157/14. The said 12 cents of property was originally owned by one Kanakku Govindan Velayudhan S/o Kanakku Govindan Krishnan, Peringala, Kayamkulam Village. The said 12 cents of property was lying in east-west direction in rectangular shape on the northern side of the property of Travancore Devaswom Board. Out of the 12 cents of property, the eastern portion of the 8 cents is in the possession of other three families and they are residing therein separately. The remaining 4 cents of property in the possession of the petitioner and the petitioner has inherited from his father viz; Padmanabha Pillai and they are in possession for more than

50 years. The said 1.62 ares of property is lying contiguously with the other properties of the petitioner comprised in re-survey No. 117/45, 117/32 and 117/31 of Kayamkulam Village lying within the same boundaries. The property owned by the 1st defendant Devaswom Board situates on the southern side of the plaint schedule property wherein Karimuttam Devi Temple situates. The said property is separated with two pillars and erected two layer iron gate therein by the petitioner. The old survey number of the property of Devaswom is comprised in 158/1. The plaint schedule properties are in survey No. 157/14. The properties are lying separately with definite boundary line. The Devaswom Board had never been any right, title and possession in the property in re-survey No. 157/14. In the process of re-survey, by mistake, the above said 1.62 ares of property happened to be included in the thandaper of Devaswom and in the re-survey plan. Since in the re-survey records, the said 1.62 ares of property is shown as the property of Devaswom board, the concerned authorities of the board unauthorisingly claiming the right over the said property. In fact, Devaswom has no right or possession over the said property. The defendant contended that the plaint schedule property is a part and parcel of re-survey No. 117/45, 73 ares corresponding to old survey No. 158/1 of Kayamkulam Village

against the settlement register. In the settlement register, it is specifically stated that the devaswom property is lying in old survey 158/1. There is no document to show that the devaswom has any right in properties covered in old survey No. 158/14. It is also contended that the northern portion of the temple property is not protected by any boundary wall which helps the petitioner for claiming the title of plaint schedule property. Defendant also contended that the plaint schedule property is not lying contiguously with the other properties of the petitioner and portion of it is not used as way of the petitioner. In the chief affidavit of the defendant, it is averred that from the very inception, the plaint schedule property is lying as a raised land and not lying as "Nilam." All the above contentions are against real facts. In the above circumstances, for proving the fact that the plaint schedule property is separated with Devaswom property with aged two pillars with iron gate therein and also to prove that a portion of the plaint schedule property is lying as nilam and also to prove that the said land lies contagiously with the other property and it is being used as a way, a commission report and mahazar is highly necessary for deciding the matter in dispute in the suit. For the last two years, the petitioner has been working as Assistant Engineer in KSEB at Nilambur and hence the

petitioner was not able to contact the advocate in time and the petitioner was not able to file the commission application in the earlier proceedings of the case. For the just decision of the case, it is highly necessary to bring a commission report and mahazar in respect of the plaint schedule property. The delay caused for filing the application was not due to the wilful negligence or laches on the side of the petitioner and this application is filed not for delaying the decision in the case. The petitioner was examined as PW1 and documents A1 to A8 were marked and plaintiff's evidence was closed. In the above said circumstances, the petitioner filed an application to reopen the evidence of the plaintiff and also a separate application for appointment of an urgent commission to prepare a mahazar and report in respect of the plaint schedule property and those applications are to be allowed, otherwise it would cause irreparable loss and injury to the petitioner. Thus, this petition.

3. The respondent/ defendant filed objection contending *inter alia* as follows:- The petition to re-open this case for evidence of the plaintiff is not maintainable and it is not allowable. The counter petitioner had filed separate detailed objection to I.A.No. 11/2024, the petition to appoint advocate commissioner. This petition for reopening the evidence is also filed reiterating the same grounds. Hence the

objection filed by the counter petitioner in the other may also be considered as part of this in order to repetition. A re-opening the case for evidence of the petitioner is not called for at this stage of the suit. A commissioner's report as sought in the other petitioner is not at all necessary for the disposal of the case in hand. The commission application of the plaintiff is not supported by any pleadings or evidence already adduced by the plaintiff. In the nature of this case, a commissioner cannot be appointed to collect evidence for the plaintiff. It is a highly belated application and not at all required for a just decision of the case in hand especially on the basis of the case pleaded and the reliefs claimed. It is only an abuse of process of the court and it will cause much prejudice to the counter petitioner alone. Hence the respondent sought to dismiss the petition.

4. The following points were formulated for consideration:-

1. Whether the petition is allowable ?
2. What shall be the order as to reliefs and costs?

5. Heard both sides.

6. **Point No. 1**:- The above numbered suit is filed for declaration of title and possession of the plaintiff over the plaint schedule property and consequential injunction. Now, the evidence of

the plaintiff is closed and the case is adjourned for the evidence of the defendant. Only after the closure of the evidence of the plaintiff, the petitioner filed this petition for reopening the evidence for the purpose of filing a commission application. According to the petitioner, for proving the fact that the plaint schedule property is separated with the property of Devaswam with aged two pillars with two iron gates therein and also to prove that a portion of the plaint schedule property is lying as nilam and also to prove that the said land lies contiguously with other properties of the plaintiff and it is being used as a way, a commission report and mahazar are highly necessary for deciding the matter in dispute in the suit. According to the respondents, the reopening of the evidence of the petitioner cannot be allowed at this stage and the commission report sought for is not necessary for the just disposal of the case. It is highly belated application and will cause prejudice to the respondents. On perusal of records, the plaintiff is examined as PW1 and he was vehemently cross-examined by the learned counsel for the defendants. Now, only for filling the lacuna of evidence come on record, he filed this petition for reopening the evidence of the plaintiff in order to file a commission application. On perusal of the evidence, no such application is allowable at this stage as

it will cause prejudice to the opposite side. Hence the court is of the opinion that there is no need to re-open the evidence for the purpose of considering the commission application. Hence point No. 1 is found against the petitioner.

7. **Point No. 2**:- In view of my discussions and findings on point No. 1, 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 13th day of December, 2024.)

Sd/-
ANEESA.A
MUNSIFF

APPENDIX:

Nil.

Sd/- MUNSIFF

// True copy //

MUNSIFF

Typed by :Shafeek.
Compd by:

Order in IA.1/2024
in OS No.376/2024,
Dated.03/12/2024