

IN THE COURT OF THE MUNSIF, KAYAMKULAM  
Present: Smt. Saritha Raveendran, B.A., LL.B., Munsiff  
Monday, the 20<sup>th</sup> June 2016/30<sup>th</sup> Jyaishta 1938

OS. 275/2014

(Filed on 01/07/2014)

Plaintiffs : 1. Fiji Rajeev, 47 years, D/o Late Chandran @ Chandrangathan, Now residing at 'Krishna' Chirakadavom Muri, Kayamkulam village, From Chakkittayil House, Malamel bhagom muri, Keerikkadu village.

2. Rethika B Lekshmi, 14 years, D/o Late Binu chandran, Chakkittayil House, Malamel bhagom muri, Keerikkadu village, Minor rep.by Grandmother (next friend) C.N. Leelamoni, 65 years, W/o Chandrangathan of ..do... ..do..

(By Adv. Sri. N. Raveendran & Adv. Sri. M.R. Salim)

Defendants : 1. Binu Mathai, 60 years, S/o Late V. Mathai, Mamoottil House, Kunnam muri, Mavelikara village, Mavelikara Taluk.

2. Senior Regional Manager, Hindustan Petroleum Corporation Ltd., Cochin Regional Office, Ernakulam North, Ernakulam District

(Exparte)

This suit is coming on for final hearing on 04/06/2016 and on 20/06/2016 the court delivered the following:

**JUDGMENT**

Suit is for declaration, mandatory and permanent prohibitory injunction.

2. Plaintiff averments in brief are as follows:- 1<sup>st</sup> plaintiff is the sister of the 2<sup>nd</sup> plaintiff's deceased father, Binu Chandran. 2<sup>nd</sup> plaintiff is a minor and she is represented by her grandmother as next friend. The property scheduled

previously belonged to Malankara Syrian Catholic Arch Diocese of Thiruvananthapuram. Said property was taken on ground rent by one V.Mathai, the father of the 1<sup>st</sup> defendant from its previous owner. Said Mathai then started a fuel pump in the plaint schedule property. 2<sup>nd</sup> defendant is the senior regional manager of Hindustan Petroleum Corporation Ltd. Said V.Mathai died on 18.02.1994 and right of said fuel pump has been vested with the 1<sup>st</sup> defendant, his mother, brothers and sisters. All the legal heirs of said V. Mathai executed a release deed No. 3295/95 in favour of the 1<sup>st</sup> defendant. Thereafter the 1<sup>st</sup> defendant entered into an agreement on 17.06.1998 with 1<sup>st</sup> plaintiff's father and thereby transferred the fuel pump in the plaint schedule property to the 1<sup>st</sup> plaintiff's father. Consideration of the said agreement was Rs. 20,00,000/-. From the said total consideration, Rs.14,25,000/- was paid in cash to the 1<sup>st</sup> defendant on the date of the agreement itself and the balance amount of Rs. 5,75,000/- was paid through four cheques. 1<sup>st</sup> plaintiff's father had taken possession of the plaint schedule property and the fuel pump. Thereafter the 1<sup>st</sup> plaintiff's father died and plaintiff's brother Binu Chandran had conducted the fuel pump. Binu Chandran died on 10.10.2010. 1<sup>st</sup> plaintiff's deceased father Chandran derived title over the plaint schedule property by virtue of an Exchange deed No. 1275/2001 executed by said

Chandran and the previous owner of the plaint schedule property. By virtue of exchange deed No. 1275/2001, 1<sup>st</sup> plaintiff's deceased father became the absolute owner in possession of the plaint schedule property and the fuel pump therein. After the death of Binu Chandran, 1<sup>st</sup> defendant gave authorization to the 1<sup>st</sup> plaintiff's mother Leelamoni to operate bank account of the fuel pump. The smooth operation of the above said bank account is highly necessary and inevitable for the smooth running of the pump in plaint schedule property. 1<sup>st</sup> plaintiff's father was executed a will deed No. 55/III/12 during his life time by bequeathing his assets to the plaintiffs 1&2 and 1<sup>st</sup> plaintiff's mother, C.N.Leelamoni. Plaintiff has every right to conduct the petrol pump in the plaint schedule property. Defendants have no right to deny the said right of the plaintiffs. Now the 1<sup>st</sup> defendant frequently obstructs the plaintiffs from conducting the petrol pump in the plaint schedule property. 2<sup>nd</sup> defendant under the influence of the 1<sup>st</sup> defendant is in hasty preparations to cancel the licence of the petrol pump in the plaint schedule property. Now the 1<sup>st</sup> defendant plays bargaining tricks by taking advantage for being the licence in his name. Hence the suit.

3. Even though the defendants filed written statement, they were remained absent and set ex-parte. Plaintiff filed proof affidavit and

examined as PW1. Exts. A1 to A3 series and C1 marked from the side of the plaintiff. Ext.A1 is the original will No.55/III/12. Ext.A2 is the certified copy of the exchange deed No. 1278/01. Ext.A3 series are the invoices of Hindustan Petroleum Corporation Ltd. From the unchallenged evidence of PW1 and from Exts. A1 to A3 series and C1, plaintiff proved cause of action as well. Therefore, the plaintiff is entitled to get a decree as prayed for.

In the result, suit is decreed as follows:-

1. Declaring that the plaintiffs have right, title and possession over the plaint schedule property having an extent of 3.23 Ares comprised in resurvey No. 163/4 by virtue of the will deed No. 55/III/12 dated 25.04.2012 and also declare that the plaintiffs are entitled to conduct the petrol pump in the plaint schedule property.
2. 1<sup>st</sup> defendant is directed to allow the plaintiff to use the account No. 10540200005240 at Federal Bank Ltd., main branch, Kayamkulam after removing the order of freezing the said account.
3. It is directed the 2<sup>nd</sup> defendant to transfer the licence of petrol pump in the plaint schedule property in the name of the plaintiffs.
4. 1<sup>st</sup> defendant is restrained by a decree of permanent prohibitory

injunction from causing any obstruction to the smooth conduct of the petrol pump in the plaint schedule property and 2<sup>nd</sup> defendant is restrained from cancelling the licence of the petrol pump in the plaint schedule property.

5. Plaintiffs are entitled to realize the costs of the suit.

*(Dictated to the Confidential Assistant, transcribed and typed by her, corrected and pronounced by me in open court on 20<sup>th</sup> day of June, 2016.)*

Sd/-

SARITHA RAVEENDRAN,  
MUNSIFF

APPENDIX :

Exhibits for Plaintiff

A1	-	25/04/2012	Will deed No. 55/III/2012
A2	-	18/05/2001 -	Certified copy of Exchange deed No. 1278/01
A3 Series	-	-	Invoices of Hindustan Petroleum Corporation Ltd. (28 Nos)

Exhibits for Defendant - Nil

Witness for Plaintiff

PW1 - 04/06/2016 - Fiji Rajeev

Witness for defendant - Nil

Court Exhibits

C1 - 11/07/2014 - Commission report filed by Adv. Sri. Unni J Warrieth.

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