

IN THE COURT OF THE MUNSIF, KAYAMKULAM

Present: Sri.Shanavas.A, Munsiff

Tuesday, the 7th day of December 2021/16th Agrahayana 1943.

ORIGINAL SUIT. 379/2014

(Filed on 30/08/2014)

Plaintiff:

Beena, aged 40 years,

W/o.Vijayan,

Kausthubham,

Prayar north muri,

Puthuppally Village.

(By Adv.Sri.D.Sajeev)

Defendants:

1. Reghu, aged 50 years,
S/o.Padmanabhan,
Ratheesh Bhavan,
South Kochu muri,
Krishnapuram Village,
Karthikapally Taluk.
From Kurasseril house,
Puthuppally South muri,
Puthuppally Village.
2. S.N.D.P Branch No.4142
Rep.by its Secretary,
Karunakaran, aged 70 years,
S/o.Paramu, Kurasseril House,
South Kochumuri,
Puthuppally Village.

3. Radhakrishnan, aged 50 years,
S/o.Gangadharan,
Aji Bhavanam, Puthuppally South,
Puthuppally Village.
 4. Sundaram, aged 50 years,
S/o.Gopalan, Sindooram,
Puthuppally South muri,
Puthuppally Village.
 5. Gouri, aged 80 years, (Died),
W/o.Late.Prabhakaran,
Manjaditharayil,
Puthuppally South muri,
Puthuppally Village.
 6. Prasanthan, aged 50 years, (Died),
S/o.Prabhakaran,
Manjaditharayil,
Puthuppally South muri,
Puthuppally Village.
- Addl.D7. Pradeep, aged 50 years,
Manjaditharayil,
Puthuppally South muri,
Puthuppally Village.
- Addl.D8. Pramod, aged 45 years,
Manjaditharayil,
Puthuppally South muri,
Puthuppally Village.

- Addl.D9. Sindhu, aged 42 years,
Manjaditharayil,
Puthuppally South muri,
Puthuppally Village.
- Addl.D10. Beena, aged 44 years,
Manjaditharayil,
Puthuppally South muri,
Puthuppally Village.
- Addl.D11. Ponnamma, W/o.Prasanthan,
Manjadithara veedu,
Kayamkulam. Puthuppally P.O,
Puthuppally thekkum muri,
Puthuppally Village.
- Addl.12. Praveen, S/o.Late.Prasanthan,
Manjadithara veedu,
Kayamkulam. Puthuppally P.O,
Puthuppally thekkum muri,
Puthuppally Village.
- Addl.D13. Priyanka, aged 19 years,
D/o.Late. Prasanthan,
Manjadithara veedu,
Kayamkulam. Puthuppally P.O,
Puthuppally thekkum muri,
Puthuppally Village.

(Addl. Defendants 7 to 13 are impleaded as per order in IA.3262/14 dated.12.04.2016)

(D1 to D4, Addl.D7 to Addl.D13 Exparte) (D5 & D6 Died)

This plaint is filed under section XXVI Order VII and Rule 1 of the civil procedure code and coming on for final hearing before me on 06.12.2021 in the presence of the counsel for plaintiff and having been stood over consideration till 07.12.2021 and the court on the same day delivered the following.

JUDGMENT

Suit for fixation of boundary, mandatory injunction and for permanent injunction.

2. The case of the plaintiff in brief is as follows:- Plaintiff is the owner-in possession of plaint schedule property ad-measuring 3.30 ares comprised in re-survey No. 594/2 of Puthuppally Village by virtue of sale deed No. 574/2008 of Sub Registrar's Office, Kayamkulam. She has been paying basic tax for the plaint schedule property. The 1st defendant installed a bunk on the road puramboke on the west adjacent to plaint schedule property. Nowadays, the 1st defendant illegally trespassed into the plaint schedule property. The 2nd defendant also put up an effigy of Sree Narayana Guru made of plastic and holding it by tying with a string from the roof of the wooden shed. The 3rd defendant is the kingpin of 'Kalakettu Samithy', which is not a registered organization. Defendant Nos. 2 and 3 are illegally occupying northern puramboke portion of the 1st

defendant's bunk. Recently they trespassed into the plaintiff schedule property. Defendant Nos. 2 and 3 are using the timber shed situated in the road purmabokey, which lies on the north adjacent side of the 1st defendant's bunk. On 01.07.2014, the 1st defendant illegally intruded into the back portion of the wooden bunk into the plaintiff schedule property. Again, a small portion on the back side of the timber shed is also protruded into the plaintiff schedule property. The defendants have no right over the plaintiff schedule property. The defendants again trying to possess certain portions of plaintiff schedule property by intruding the bunk and shed into the plaintiff schedule property. But due to the timely intervention of the plaintiff and her husband, the defendants were thwarted from their illegal attempt. So, fixation of boundaries of the plaintiff schedule property is necessary and the wooden frame in the shed for the 'Kalakettu Samithi' has to be removed from the plaintiff schedule property. Thus, the suit.

3. The defendants appeared and filed written statement. When the case listed for evidence on 04.12.2021, the counsel for defendants submitted that he has no instructions from the defendants. Hence the

defendants were called absent and set ex parte.

4. Plaintiff filed affidavit in lieu of examination in chief and he was examined as PW1. Exts. A1 to A4 were marked. Exts. C1 and C1 (a) were marked as court exhibits. Ext. A1 is the title deed of the plaint schedule property. The extent of the plaint schedule property stated in Ext. A1 is 3.30 ares. Ext. A2 is the prior document of Ext. A1, which stands in the name of vendor of Ext. A1, Sri. Vijayan. Exts. A3 series are the basic tax receipts in the years from 2016 to 2021, which also go to show that PW1 has been remitting basic tax for the plaint schedule property. Ext. A4 is the order of the Hon'ble Additional District Court-I, Mavelikara in I.A.No. 260/2014 in A.S No. 92/2011 dated 24.06.2014. The Hon'ble court allowed the plaintiff to withdraw O.S.No. 259/2008 on the file of this court on payment of costs. The commissioner deputed from this court filed commission report and plan, which are marked in evidence as Exts. C1 and C1(a). The commissioner categorically reported the entire extent of the plaint schedule property as 3.30 ares comprised in re-survey No. 594/2, which is denoted by letters 'acdeha' in Ext. C1(a) plan. He has been reported that some portion of plaint schedule property were given to

road, which is having an extent of 47 Sq. Metres, which is denoted by letters 'abfha' in Ext. C1 (a). Further, the commissioner identified 19 Sq. Metres of property, wherein 2nd defendant put up an effigy of Sree Narayana Guru, which is denoted by letters 'lmnol' in Ext. C1(a). So also, the commissioner and surveyor identified 13 Sq. Metres of encroachment into the plaint schedule property by the 1st defendant, which is denoted by letters 'ijkgi' in Ext. C1 (a). So, it stands proved that defendant Nos. 1 to 4 are the trespassers and they installed bunk, effigy, and wooden frame in the plaint schedule property. As regards the relief of fixation of boundary, it is trite that the properties adjacent to the plaint schedule property has to be scheduled. In this case, only plaint schedule property was scheduled. Adjoining properties were not scheduled. In **Nandakumara varma and Another v. Usha Varma and Another** [2015(1)KLJ 73], the Hon'ble High Court of Kerala held that *"In a suit for fixation of boundary, it is not the boundary of the plaintiff alone that is fixed. The description of the properties of both parties in separate schedules in the plaint and the plaintiff making a prayer for fixation of the boundaries between the properties is necessary in a suit for fixation of boundary."* So, here in this case, the plaintiff failed to

schedule adjoining properties to fix boundaries of plaintiff schedule property. So, the relief cannot be allowable. On scrutiny of the evidence let in on the side of the plaintiff, it can be summed up that the plaintiff could prove the encroachment over the plaintiff schedule property and the defendants invading the plaintiff's right over the plaintiff schedule property. Thus, the suit is liable to be decreed in part.

In the result, the suit is decreed in part:-

- (a) 1st defendant is directed by decree of mandatory injunction to remove the bunk situated in the plaintiff schedule property, which is denoted by letters 'ijkl' in Ext. C1 (a) plan within 60 days from the date of decree.
- (b) Defendant Nos. 2 and 3 are further directed to remove the effigy and constructions in 'lmno' portion within 60 days from the date of decree.
- (c) Defendant No.4 is further directed to remove the wooden frame within 60 days from the date of decree; failing which, the plaintiff is at liberty to execute the decree through the process of the court

at the expense of the defendants.

- (d) The defendants and men or agents are restrained by a decree of permanent injunction from further trespassing into the plaint schedule property.
- (e) Ext.C1 (a) Plan shall forms part of the decree.
- (f) Defendants shall pay costs of the suit to the plaintiff.

(Dictated to the Confidential Assistant, transcribed and typed by her, corrected and pronounced by me in open court on 07th day of December, 2021.)

Sd/-
SHANAVAS. A
MUNSIFF

APPENDIX

Exhibits for the Plaintiff:

A1	12.03.2008	:	Settlement deed No.574/2008 of SRO, Kayamkulam.
A2	05.03.2005	:	Sale deed No.565/2005 of SRO, Kayamkulam.
A3	10.06.2016	:	Basic Tax receipt of Puthuppally Village.
A3(a)	06.07.2017	:	Basic Tax receipt of Puthuppally Village.
A3(b)	20.04.2018	:	Basic Tax receipt of Puthuppally Village.
A3(c)	06.07.2019	:	Basic Tax receipt of Puthuppally Village.
A3(d)	04.01.2020	:	Basic Tax receipt of Puthuppally Village.
A3(e)	25.06.2021	:	Basic Tax receipt of Puthuppally Village.
A4	24.06.2016	:	Certified copy of order in IA.260/2014 in AS.92/2011.

Exhibits for the Defendants : Nil.
Witness for the Plaintiff:

PW1 04.12.2021 : Beena.

Witness for defendants : Nil.

Court Exhibits:

C1 13.11.2017 : Commission report prepared by
Adv.V.Santhosh.

C1(a) 13.11.2017 : Plan prepared by Panal Serveyor,
Madhu.M.

Sd/-
MUNSIFF

// True copy //

MUNSIFF

Typed by: Shafeek
Compd by:

Judgment in OS.379/2014
dated.07/12/2021