

IN THE COURT OF THE MUNSIFF, KAYAMKULAM

Present: Sri.Shanavas.A, Munsiff

Friday the 6th day of January 2023/ 16th Pousha 1944

Common Order in I.A. 1/2022 and I.A. 4/2022
in OS.304/2022

(Filed on 15.09.2022)(22.10.2022)

I.A.1/2022 in ORIGINAL SUIT.304/2022

(Filed on 15.09.2022)

- Petitioners/ Plaintiffs:**
1. Sreedevi, aged 52 years,
D/o.Saraswathiyamma,
Kanjirathummoottil veedu,
Krishnapuram muri,
Krishnapuram Village.
(Sreeragam veedu,
Njakkanal muri,
Krishnapuram Village).
 2. Renuka, aged 46 years,
D/o.Saraswathiyamma,
Kanjirathummoottil veedu,
Krishnapuram muri,
Krishnapuram Village.
(Kottaykkattu Thekkathil,
Kaitha thekkum muri,
Kannamangalam Village).

(By Adv.Sri.S.Mohanan)

- Respondents/Defendants:**
1. Lalitha, aged 46 years,
W/o.Sreekuttan,
Kanjirathummoottil veedu,
Krishnapuram muri,
Krishnapuram Village.
 2. Sreekutty, aged 24 years,
D/o.Lalitha,
Kanjirathummoottil veedu,
Krishnapuram muri,
Krishnapuram Village.

(By Adv.Sri.C.D.Anil)

I.A.4/2022 in ORIGINAL SUIT.304/2022

(Filed on 22.10.2022)

- Petitioners/Defendants:**
1. Lalitha, aged 46 years,
W/o.Sreekuttan,
Kanjirathummoottil veedu,
Krishnapuram muri,
Krishnapuram Village.
 2. Sreekutty, aged 24 years,
D/o.Lalitha,
Kanjirathummoottil veedu,
Krishnapuram muri,
Krishnapuram Village.

(By Adv.Sri.C.D.Anil)

- Respondents/Plaintiffs:**
1. Sreedevi, aged 52 years,
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Kottaykkattu Thekkathil,
Kaitha thekkum muri,
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(By Adv.Sri.S.Mohanan)

These petitions are IA.1/2022 filed Under Section 151 Order 39 and Rule 1 of the Civil Procedure Code and I.A.4/2022 filed Under Order 39 Rule 4 of the Civil Procedure Code and coming on for final hearing before me on 21.12.2022 in the presence of the counsel for both sides and having been stood over consideration till 06.01.2023 and the court on the same day passed the following.

COMMON ORDER

I.A.No. 1/ 2022 filed by the petitioner/ 1st plaintiff under Order XXXIX Rule 1 of the Code of Civil Procedure, 1908 for temporary injunction. I.A.No. 4/ 2022 is a petition filed by the

petitioner/ 1st defendant under Order XXXIX Rule 4 of the Code of Civil Procedure, 1908 to set aside the order passed by this court in I.A.No. 1/ 2022 dated 15.09.2022.

I.A.No. 1/ 2022

2. The gist of averments in the petition are as follows:-
Petitioner is the 1st plaintiff in the suit. The 2nd plaintiff is the sister of the 1st plaintiff. The 1st respondent is the sister-in-law of the petitioners, who is the wife of Sri. Sreekkuttan, brother of petitioners. The 2nd respondent is the daughter of 1st respondent. The plaint schedule property and the residential building therein was given to Sri. Sreekkuttan by virtue of the second schedule of partition deed No. 1532/1997 of Sub Registrar's Office Kayamkulam. The house therein is the family house of the petitioners and Sri. Sreekkuttan, the husband of the 1st respondent. As per the first schedule of the above partition deed, the property therein was transferred to Sri. Sreekkuttan. Subsequently, the property as per schedule No. 3 of the above partition deed was transferred to the 1st respondent by the wife of deceased Venugopal and their son Sri. Vaisakh. Right now, the entire property of the partition deed is owned and possessed by the respondents. The petitioners are the co-owners of the plaint schedule property. Since

they had love and affection towards the members of the family and to maintain the oneness among them, the petitioners relinquished their respective claim over the property and reserved the only right of residence over the house in the plaint schedule property, which was clearly stated in partition deed No. 1532/1997. Neither Sri. Sreekkuttan nor his heirs have right to obstruct the above right of the petitioners. The petitioners have the right to reside in the house in the plaint schedule property till their death. After the demise of the mother of the petitioners, Smt. Saraswathi Amma, the respondents had developed animosity towards the petitioners. On the death anniversary of the siblings and mother of the petitioners, they used to reside in the house in the plaint schedule property and offering rituals and prayers for the departed souls. Matter being so, last death anniversary of Sri. Sreekkuttan was on 22.07.2021. There was an offerings and prayer function for the demised persons. Whereas, the petitioners were not invited by the respondents. Son of the 1st petitioner Sri. Sreeraj was informed by the respondents that the petitioners will not enter into the plaint schedule property and not reside therein. Thus, the petitioners sought to restrain the respondents and men from obstructing the residence of the petitioners in the house situated in the plaint schedule

property and from making any alterations in the house therein. Thus, the petition.

I.A.No. 4/ 2022

3. In a nutshell, the averments in the petition are as follows:-
Petitioners are the defendants in the suit and respondents in I.A.No. 1/2022. The respondents had obtained an ad interim injunction on 15.09.2022 by suppressing material facts from this court. This court was inclined to restrict the petitioners from obstructing the respondents from entering into the house in the plaint schedule property or from obstructing the residence of the respondents in the house until further orders. Sri. Narayanan Nair, who is the father of the respondents, and father-in-law of the 1st petitioner, was the owner of the property inclusive of the plaint schedule property. He had obtained the property by virtue of partition deed No. 4524/1960 of Sub Registrar's Office, Kayamkulam. He married Smt. Saraswathi Amma, the mother of the respondents, and mother-in-law of the 1st petitioner. They had four children. Sri. Venugopalan Nair and Sri. Sreekkuttan are the male off springs of Sri. Narayanan Nair and Smt. Saraswathi Amma. Both are no more. Sri. Venugopalan Nair is survived by Smt. Sreedevi, wife, and Sri. Vaisakh, son. So also, Sri.

Sreekkuttan is survived by the petitioners herein. The other two female off springs are the plaintiffs in the suit and the respondents in the petition. In fact, Sri. Narayanan Nair was conducting a tea shop on the eastern side of the residential building. He had died in the year 1987. After the demise of Sri. Narayanan Nair, Late Sreekkuttan was continuing with the tea shop business. On 09.06.2006, Smt. Saraswathi Amma, the mother-in-law of the 1st petitioner and mother of respondents, had died. There is a building in the plaint schedule property, which had more than 50 years old. The marriage expense of the 2nd respondent was met by Sri. Sreekkuttan. After the marriage of the 1st petitioner and Late Sreekkuttan, partition was made among the members of the family, as the title holder of the plaint schedule property, deceased Narayanan Nair died intestate. The partition deed No. 1532/1997 of Sub Registrar's Office, Kayamkulam was executed, by which the mother of the respondents/ mother-in-law of the 1st petitioner was given plaint schedule item No. 1 property. Sri. Sreekkuttan was given plaint schedule item No. 2 property and Smt. Sreedevi, who is the wife of Late Venugopal, and his minor son Vaisakh was given plaint schedule item No. 3 property. Whereas, Smt. Sreedevi and Renuka, who are the plaintiffs, were not given any

property instead of right to residence was conferred to reside in the house in the plaint schedule property. The residential building was allotted to Sri. Sreekkuttan as per the recitals in the partition deed, which includes in item No. 3 of the partition deed. By virtue of sale deed No. 1415/2000, item No. 3 property in the partition deed was transferred to one Sasidharan. Thereafter, the petitioners re-purchased the said property and building by virtue of sale deed No. 769/2022 of Sub Registrar's Office, Kayamkulam. The husband of the petitioner had died on 22.07.2021. During the life time of the husband of the petitioner, the respondents were in inimical terms with him and their mother. Since the date of marriage of the respondents, they never exercised any right as to life estate on having overnight stay or casual stay. In fact, the 1st respondent had not even participated the funeral function of deceased Sreekkuttan. After the demise of Sri. Sreekkuttan, the respondents did not visit the family house and not stayed there. Currently, as part of the widening of NH 66, 85% of the residential structure was acquired for widening the road. 1.447 cents of property was also acquired for widening the highway. Now, the remaining structure was in an irregular shape in a triangle manner. The above structure is not befitted for human habitation. The remaining 15% of

the building was sliced into triangular mode and the same cannot be used for human habitation. The above facts were suppressed by the respondents. The right of residence of the respondents was frustrated by virtue of land acquisition. So, the doctrine of impossibility comes into play. So, the right acquired by the respondents through the partition deed was frustrated by subsequent impossibility. In the land acquisition proceedings, the respondents claimed a compensation over the building and the same claim was discarded by assessing authority on finding that the land and building are free from all encumbrances. On finding that the petitioner is the owner of the property, the authority concerned awarded compensation to the petitioner as per law. The reservation of life interest in favour of the respondents in the partition deed is subject to a rider that the building in item No. 2 property available for occupation as such. The remaining portion is a strip of land and the building which cannot be used for dwelling as stated. Thus, the petitioners/ defendants sought for setting aside the order passed by this court on 15.09.2022. Thus, the petition.

4. The following points were formulated for consideration in both the I.As:-

1. Whether the petitioners I.A.No. 1/2022 have made out a prima facie case?

2. In whose favour, balance of convenience lies?
3. Whether the petitioners in I.A.No. 1/2022 would suffer irreparable injury and loss, if order of injunction is refused ?
4. Whether the petitioners in I.A.No. 1/2022 are entitled to an injunction as prayed for ?
5. Whether the petitioners in I.A.No. 4/2022 are entitled for an order setting aside the ad interim injunction passed by this court on 15.09.2022 ?
6. What is the order as to Reliefs and costs?

5. Ext. A1 was marked on the side of the petitioners for reference. Exts. B1 to B9 were marked on the side of the respondents for reference. The petitioners in I.A.No. 1/2022/respondents in I.A.No. 4/2022/ plaintiffs will be referred as “petitioners” hereinafter. The respondents in I.A.No. 1/2022 and the petitioners in I.A.No. 4/2022/ defendants will be referred as “respondents” hereinafter. Heard both the sides.

6. **Point Nos. 1 to 5:-** These points can be considered together. The petitioners approached this court for prohibiting the respondents from obstructing the residence of the petitioners in the

house situated in the plaint schedule property, which was granted through Ext. A1 partition deed. The recitals of Ext. A1, which is also marked on the side of the respondents as Ext. B1, go to show that the petitioners have right to reside in the house in the plaint schedule property as they relinquished their right over the plaint schedule property during the time of partition deed. It was also stated in Ext. B1 deed that no one has right to obstruct the right of residence of petitioners. After the execution of Ext. A1 deed, the entire properties inclusive of the plaint schedule property was either purchased or transferred to the 1st respondent herein. After the demise of Sri. Sreekkuttan, as the heirs, the respondents got the plaint schedule property by virtue of intestate succession. Those facts are not disputed in this case. It is to be noted that the recitals and right of residence over the house in the plaint schedule property also not disputed by the respondents.

7. The case of the respondents is that the petitioners had suppressed material facts from this court and approached this court with unclean hands. So, the equitable relief of injunction cannot be granted to him on the mere reasons that they had suppressed material facts. The suppression according to the respondent is that 85% of the

residential building and the property therein was acquired by the National Highway authorities for widening NH 66. Ongoing through the averments in I.A.No. 1/2022, there is no averments regarding the acquisition of part of the residential house in the plaint schedule property. The petitioners had suppressed the same before this court while moving the suit as well as the interim injunction application. Ext. B7 is the copy of the notice issued to the petitioner by the Special Tahsildar on 19.02.2022. Precisely, the petitioner filed an application before the assessing authority regarding the extension of solatium to her. For hearing the matter, she was issued with Ext. B7 notice. It can be decipher from Ext. B7 that it was issued to the 1st petitioner prior to filing the suit before this court. So, it can be seen that the petitioner was well aware of the fact of acquisition of the property even prior to the filing of the suit. Ext. B8 is the proceedings of the Special Collector and competent authority as per the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. Accordingly, the 1st respondent was given Rs. 56,77,317/- as compensation by the authority concerned for widening and acquisition of the above portion. In fact, the assessing authority rejected the claim of the petitioner over the house in the

plaint schedule property. Ext. C1 report shows that the part of the residential building was demolished and the remaining structure was changed as two shop rooms. Anyhow, it can be clear from Ext. C1 that the structure as per Ext. A1 is not there in the plaint schedule property, which was acquired by the National Highway authorities.

8. The learned counsel for the respondents submitted that it is an act of god. Rather the doctrine of frustration is applicable. Hence the right of the petitioners is washed away by the subsequent impossibility of acquisition for widening of the road. The question of frustration and subsequent impossibility and the act of god will be considered only after a full-fledged trial in this case. It is premature to hold that the right of the petitioners have extinguished through the above reasons. Anyhow, it is seen that some part of the residential building was there. So, the right of the petitioners to reside in the remaining structure cannot be curtailed by the respondents. Obviously, the petitioners have the right of residence till their last breath. As regards the right of the petitioners regarding the right of residence in the residential building in the plaint schedule property will be adjudicated after the evidence adduced on either side. The respondents cannot be allowed to alter the part of the residential

property available in the plaint schedule property so as to desist the petitioners from claiming their right of residence therein. All the right available to the respondents in the residential house can be adjudicated after trial.

9. The petitioners suppressed the fact of acquisition and the fact that 85% of the residential building, wherein the petitioners exercised their right of residence was acquired was also suppressed by the petitioners from this court. It is trite that injunction is an equitable remedy. One who seeks equity, must come with clean hands. Here in this case, the petitioners deliberately suppressed those facts and managed to obtain an ad interim injunction from this court. It is seen that the right of the petitioners will not extinguish merely because of the acquisition of certain part of the building by the National Highway authorities. Considering the entire matters on record, it can be held that the petitioners failed to make out a prima facie case. Balance of convenience is also not in favour of them. The petitioners will not put to irreparable injuries or untold hardships, if the injunction is refused. On the other hand, the respondents succeeded in making out a prima facie case. Balance of convenience is also in favour of them. If this court is refused to set aside the injunction, it will cause irreparable

injury and untold hardships to the respondents. Hence point Nos. 1 to 4 are found against the petitioners in I.A.No. 1/2022 and point No. 5 is found in favour of the respondents/ petitioners in I.A.No. 4/2022. Thus, these points are answered accordingly.

10. **Point No. 6** :- In view of my discussions and findings on point Nos. 1 to 5, I.A.No. 1/2022 is liable to be dismissed and I.A.No. 4/2022 is liable to be allowed.

In the result, I.A.No. 1/2022 is dismissed. I.A.No. 4/2022 is allowed. The ad-interim injunction granted by this court dated 15.09.2022 stands vacated. 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 06th day of January, 2023.)

Sd/-
SHANAVAS.A.
MUNSIFF

APPENDIX

Exhibits for the Petitioners/Plaintiffs:

A1. 02.06.1997 : Copy of Partition deed
No.1532/1997 of
Sub Registrar's Office,
Kayamkulam.

Exhibits for the Respondents/ Defendants:

- B1. 02.06.1997 : Partition deed
No.1532/1997 of
Sub Registrar's Office,
Kayamkulam.
- B2. 01.06.1960 : Attested copy of Partition
deed No.4524/1960 of
Sub Registrar's Office,
Kayamkulam.
- B3. 01.02.1999 : Sale deed No.266/1999 of
Sub Registrar's Office,
Kayamkulam.
- B4. 13.05.1999 : Settlement deed
No.1197/1999 on the file of
Sub Registrar's Office,
Kayamkulam.
- B5. 05.06.2000 : Sale deed No.1525/2000 on
the file of Sub Registrar's
Office, Kayamkulam.
- B6. 27.01.2022 : Copy of Certificate issued by
Tahsildar, Karthikappally.
- B7. 19.02.2022 : Notice issued by Special
Tahsildar, Haripad.
- B8. 19.03.2022 : Copy of Proceedings of
Special Deputy Collector,
Alappuzha.

B9. ---- : Sketch showing the
remaining Structure of
Residential building.

Witness for the both sides : Nil.

Court Exhibits:

C1. 14.10.2022 : Commission report prepared
Adv.Commissioner,
Sri.S.Hari Govind.

Sd/-
MUNSIFF

// True Copy //

MUNSIFF

Typed by: Shafeek
Compd by:

Carbon Copy of Common Order in
I.A. 1/2022 & I.A. 4/2022 in
OS. 304/2022, Dated.06/01/2023