

IN THE COURT OF THE MUNSIF, KAYAMKULAM

Present:- Smt.Saritha Raveendran, B.A.,LL.B., Munsiff

Wednesday, the 24th June 2015/ 3rd Ashadha 1937

OS.475/2013

(Filed on 09/12/2013)

Plaintiff : Rajendran, 47 years, S/o.Sreenivasan, Meenatheri
Vadakkathil, Njakkanal Muri, Krishnapuram Village,
Rep. By Power of Attorney Holder: Deepa Rajendran,
W/o.Rajendran of -do-do-

(Power of Attorney is allowed as per order in IA.1301/14, dtd.02/07/14)

(By Adv.Sri.S.Jeevakumar)

Defendant : Raveendranathan, 55 years, S/o.Sreenivasan, Chandrika,
Njakkanal Muri, Krishnapuram Village

(Exparte)

The suit is coming on for final hearing on 22/06/2015 and the court on 24/06/2015 delivered the following:-

JUDGMENT

Suit is for fixation of boundary and permanent prohibitory injunction.

2. Plaintiff averments in brief are as follows:- Plaintiff schedule property belongs to the plaintiff by virtue of partition deed bearing No.1744/2003. Total extent of plaintiff schedule property is having 7.59 ares which includes 6.83 ares in resurvey 905/4 and .76 ares in resurvey No.905/2 of Krishnapuram village. Defendant's property is situated on the adjacent northern side of the plaintiff schedule property. Plaintiff schedule property shares

its northern boundary with the defendant's property. Apart from clear boundary signs there are no boundary separations between the plaintiff's property and the property of the defendant. Taking advantage of lack of boundary separations between the plaintiff's property and defendant's property the defendant is committing several mischiefs in the plaintiff's property. Moreover the plaintiff demanded the defendant to co-operate for fixing the northern boundary of the plaintiff's property. But the defendant denied the said demands of the plaintiff. So it has become highly essential to fix the northern boundary of the plaintiff's property. Hence the suit.

3. Defendant remained absent. Set *exparte*. Plaintiff's Power of Attorney holder examined as PW1 and Ext.A1, A2, C1, C1(a), C2, C2(a) marked from the side of plaintiff.

4. In a suit for fixation of boundary it is not the boundary of the plaintiff alone that is fixed. It is the boundary between the property of the plaintiff and the defendant that is fixed. This necessitates description of the properties of both parties in separate schedules in the plaint and the plaintiff making a prayer for fixation of the boundary between the properties. This has not been done in this case. Plaintiff failed to schedule the defendant's property and there is no prayer for fixation of boundary between the properties of the plaintiff and the defendant. Moreover plaintiff alleged that there is no clear boundary separations between the plaintiff's property and the property of the defendant. Absence of boundary mark alone will not give the plaintiff a cause of action to institute a suit for fixation of boundary. Existence of a dispute as to the boundary, apprehension that if the defendant would trespass

into the property taking advantage of the absence of the boundary mark or that a dispute will arise if the plaintiff puts up a boundary mark are some situations in which the plaintiff may file a suit for fixation of boundary. A cause of action is necessary even to institute a suit for fixation of boundary. In this case plaintiff failed to prove that there is any dispute as to the existence of boundary or defendant would trespass into the property taking advantage of absence of boundary mark. Plaintiff has no cause of action for the suit. From the above discussion, I am of the view that the plaintiff is not entitled to get a decree of fixation of boundary and permanent prohibitory injunction as prayed for.

In the result, suit is dismissed with costs.

(Dictated to the confidential assistant, transcribed and typed by her, corrected and pronounced by me in open court on 24th day of June 2015.)

SARITHA RAVEENDRAN,
MUNSIFF

APPENDIX

Exhibits for plaintiff

A1 :26/07/1995:Certified copy of partition deed No.1986/1995

A2 :12/08/2013:Tax receipt

Exhibits for defendant : Nil

Court Exhibits

C1 :01/07/2014:Commission report filed by Advocate Commissioner

O.Hariz

C1(a):01/07/2014:Rough sketch

C2 :30/05/2015:Commission report filed by Advocate Commissioner

O.Hariz

C2(a):30/05/2015:Plan

Witness for plaintiff

PW1 :22/06/2015:Proof affidavit filed by Power of Attorney Holder of
plaintiff

Witness for defendant :Nil

MUNSIFF

Typed by : Suresh.B.
Compd. By :

