

IN THE COURT OF THE MUNSIFF, KAYAMKULAM

Present: Sri.Shanavas.A, Munsiff

Monday, the 25th day of October 2021/3rd Karthika 1943.

ORIGINAL SUIT. 360/2018

(Filed on 25/09/2018)

Plaintiff:

Vijayanathan, aged 78 years,

S/o.Sreedharan, Thriveni.

From Erumapurathu,

Peringala muri,

Kayamkulam Village.

(By Adv.Sri.S.Remanan Pillai)

Defendant:

Raveendran, aged 72 years,

S/o.Sreedharan,

Erumapurathu,

Peringala muri,

Kayamkulam Village.

(By Adv.Sri.K.P.Nandakumar)

This plaint is filed under section XXVI Order VII and Rule 1 and 2 of the civil procedure code and coming on for final hearing before me on 23.10.2021 in the presence of the counsel for plaintiff and having been stood over consideration till 25.10.2021 and the court on the same day delivered the following.

JUDGMENT

Suit for permanent injunction.

2. The averments in the plaint in short are as follows:- Plaint A schedule property ad-measuring 103 cents comprised in re-survey Nos. 99/78, 99/31, 99/79 and 99/36 of Kayamkulam Village originally belonged to the father of the plaintiff Sri. A. Sreedharan as per partition deed No. 5824/1957 and sale deed Nos. 1347/1971, 3838/1971 and 457/1974 of Kayamkulam Sub Registrar's Office. Father of the plaintiff expired on 23.11.1985 leaving his wife Devaki, his daughters Vijayasree, Sjuatha and two sons namely Raveendran and the plaintiff. After the death of father of the plaintiff, his legal heirs got 1/5th share each in the plaint schedule property. Thereafter, daughter of deceased Sreedharan, Smt. Sujatha, sister of the plaintiff, had died on 27.01.1988 leaving her only son Sujith and her mother Devaki as legal heirs. Mother of the plaintiff Devaki also died intestate in respect of her 1/5th share over plaint A schedule property. A suit has been filed for partition in respect of plaint A schedule property as O.S.No. 299/1986. Even though a preliminary decree was passed in the above suit, the proceedings of final decree have not been initiated. The plaintiff is a co-owner of plaint A schedule property and he is in

possession and enjoyment of the same with other sharers of the property. Defendant is the brother of plaintiff. Plaintiff, defendant and other legal heirs are the co sharers of plaint A schedule property. The property on the southern adjacent side of plaint A schedule property belongs to Ettutharayil Family, which is lying in touch with the Municipal road on the western side. The Municipal road is the only public road near to plaint A schedule property. For the ingress and egress of plaint A schedule property from the above said western road, there is a pathway having a length of 12.75 metres in east-west direction and a width of 9 feet in north-south direction lying on the northwestern portion of the property of Ettutharayil. The pathway scheduled as plaint B schedule. The defendant, being co-owner of plaint A schedule property, has no exclusive right or possession either on plaint A schedule property or on plaint B schedule pathway. Whereas, the defendant claims that he has exclusive right over plaint B schedule pathway. It is alleged that as per an agreement entered between him and Ettutharayil Family, he has exclusive right over plaint B schedule pathway. The members of the Ettutharayil Family have no right to deny easement right acquired by prescription by the

plaintiff and his predecessors over plaint A schedule property along with plaint B schedule property. In order to enjoy plaint A schedule property, plaint B schedule pathway is necessary. The alleged agreement executed by the defendant is in a clandestine manner as to deprive the right of the plaintiff in plaint A schedule property. Either the defendant or the members of Ettutharayil Family have no right to deny the right of easement of the plaintiff through plaint A schedule property as the plaintiff's predecessors have perfected right of easement by using plaint B schedule pathway for more than 30 years, openly, continuously, without interruption and as of right. Now plaint B schedule pathway is lying with the property of Ettutharayil Family, which is also being used by the plaintiff, defendant and other co-owners for their ingress and egress to plaint A schedule property. At the instigation of defendant, one of the members of Ettutharayil Family, Sri. Jacob Varghese with another man attempted to cause obstruction to the use of plaint B schedule pathway by the plaintiff. Accordingly, the plaintiff filed O.S.No. 22/10 for restraining them from the illegal acts. In the suit, defendant himself was impleaded as additional 3rd defendant. It is stated that the defendants in O.S.No.

22/10 had no intention to obstruct the plaintiff from using plaint B schedule pathway. Accordingly, the plaintiff has withdrawn the suit. Again the plaintiff got reliable information that the defendant and henchmen has decided to forcefully obstruct the plaintiff from using plaint B schedule pathway. Therefore, it is highly necessary to restrain the defendant from doing the above illegal acts. Thus, the suit.

3. Though the defendant appeared, he failed to file written statement, even after the statutory period. Hence the defendant was proceeded under Order VIII Rule 10 of the Code of Civil Procedure, 1908.

4. The plaintiff filed affidavit in lieu of examination in chief and he was examined as PW1. Exts. A1 to A5 were marked. Exts. C1 and C1 (a) were marked as court exhibits. The unchallenged evidence of the plaintiff proved his case. Thus, the suit is liable to be decreed.

In the result, the suit is decreed as follows:-

- (a) Defendant and men or agents are restrained by a decree of permanent injunction from causing any obstruction to the use of plaint B schedule pathway by the plaintiff for the beneficial enjoyment of plaint

A schedule property and from causing any kind of mischief or alteration in plaint B schedule pathway.

(b) Defendant 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 25th day of October, 2021.)

Sd/-
SHANAVAS.A
MUNSIFF

APPENDIX

Exhibits for the Plaintiff:

A1	29.10.1957	:	Certified copy of partition deed No.5824/1957 of SRO, Kayamkulam.
A2	13.04.1971	:	Sale deed No.1347 of SRO, Kayamkulam.
A3	12.11.1971	:	Certified copy of Sale deed No.3838/1971 of SRO, Kayamkulam.
A4	01.02.1974	:	Sale deed No.457 of SRO, Kayamkulam.
A5	31.10.2012	:	Certified copy of Judgment in OS.22/2010 on the file of this court.

Exhibits for the Defendants : Nil.

Witness for the Plaintiff:

PW1 21.10.2021 : Vijayanathan.S

Witness for defendants : Nil.

Court Exhibits:

C1 02.11.2018 : Commission Report prepared by Adv.S.Sureshkumar.

C1(a) 02.11.2018 : Rough Sketch prepared by Adv. S.Sureshkumar.

Sd/-
MUNSIFF

// True copy //

Typed by: Shafeek

Compd by:

MUNSIFF

Judgment in OS.360/2018
dated.25/10/2021