

IN THE COURT OF THE MUNSIFF, CHENGANNUR
PRESENT: SRI. HAREESH.G, M.A, LLB, MUNSIFF
TUESDAY THE 2nd JUNE, 2020/12th JAISHTAM 1942

O.S.63/2019

Filed on 08/02/2019

Plaintiff:

Amalesh Sharma, Aged 45 years, S/o Syamlal Sharma,
Ohm Vihar, Utha Nagar, R.Z.92 A, Khushi Park,
New Delhi-59, Represented by Power of Attorney Holder,
K.Sugunan, Aged 79 years, S/o Kunjukrishnan, Biju Bhavan,
House Number 62, Temple Nagar, Sakthikulangara,
Kollam Coporation, Pin-691581.

Adv.S.Ajayakumar & Adv.P.K.Sanal Kumar.

Defendant :

Omanakkuttan, Aged 46 years, S/o Krishnankutty,
Panavilayil Veedu, Ennackadu Muri, Ennackadu.P.O,
Ennackadu Village, Budhanoor, Pin-689624.

(Exparte).

This suit having been finally heard on 18/05/2020 and the court on
02/06/2020 delivered the following.

O.S.63/2019**JUDGMENT**

- 1 Suit for Prohibitory permanent prohibitory injunction. Plaintiff has instituted the suit through his power of attorney holder.
- 2 The plaint averments, in brief, are as follows:- Plaint item property was obtained by the original plaintiff as per sale deed No. 1651/10 of the SRO, Mannar .Plaintiff is in possession and enjoyment of the Plaint item property. The Plaintiff has authorised his power of attorney holder to sell the plaint item property for which the plaintiff has executed power of attorney in favour of the power of attorney holder. On 30/01/19 while the power of attorney holder of the plaintiff reached the plaint item property, the defendant obstructed him by saying that the plaintiff has got no right over the plaint item property
- 3 The defendant has got no right over the plaint item property. The defendant threatened that if the power of attorney holder of the plaintiff reaches the plaint item property he will do away with him. The illegal act of the defendant is to be restrained by a decree of permanent prohibitory injunction. Hence the suit.
- 4 The defendant filed written statement by raising the following contentions. The suit is filed by the power of attorney holder of the plaintiff by suppressing material facts. Since 2005 the defendant has got acquaintance with the original plaintiff. In the year 2010 the defendant borrowed Rs.10,00,000/- from the plaintiff on interest at the

rate of 5%. As the plaintiff demanded security for the amount the defendant executed document No. 1651/2010 with respect to his 12.25 ares of property comprised in survey 234/17-1 and 234/17 in favour of the original plaintiff. The plaintiff has agreed that when the defendant repays the amount together with interest he will re assign the aforesaid property in his favour. The defendant paid Rs.5,00,000/- to the plaintiff. Though document was executed possession of the plaintiff property was not given to the plaintiff.

5 The power of attorney holder of the plaintiff has got no right to evict the defendant from the house in the plaintiff property. The plaintiff property belongs to the defendant and he and his family are residing in the plaintiff property. The power of attorney holder of the plaintiff has got no right over the property of the defendant. The defendant instituted OS.366/18 against the original plaintiff. The original plaintiff has got no right to obtain a decree against the defendant. The plaintiff has instituted the suit to evict the defendant and his family from the plaintiff property and took possession of the plaintiff property. The plaintiff has got no right to obtain the reliefs sought in the plaintiff.

6 Based on the above mentioned pleadings the following issues are raised for trial:-

- 1) Has the plaintiff got any right over the plaintiff property?
- 2) Has the plaintiff got cause of action to institute the suit?
- 3) Is the plaintiff entitled to get a decree of permanent prohibitory injunction against the defendants?

4) What is the order as to relief and cost?

7) Issue Nos. 1 to 3

This case and OS. 366/18 are tried jointly. On the day fixed for final hearing of the suit the plaintiff was present but the defendant was absent and hence he was set exparte. Thereafter the original plaintiff gave evidence as PW1 and from his side Ext. A1 to A6 documents are marked.

8) In this case plaintiff gave evidence as PW1. PW1 filed affidavit in lieu of his examination in chief in conformity with the pleadings in these suits. Gist of his evidence is that the plaint item property in the suit belong to him as per sale deed No. 1651/10 of the SRO, Mannar. It is his evidence before the court that he has purchased the plaint item property from the defendant by paying sale consideration of Rs. 10,00,000/-. It is his evidence before the court that there was no agreement between him and the defendant to retransfer the plaint item property to the defendant on his payment of Rs.10,00,000/- with interest. It is his evidence that he is in possession of plaint item property and he has authorised his power of attorney holder to sell the property. It is the evidence of PW1 that when his power of attorney holder entered the plaint item property the defendant obstructed him and then the suit was instituted. It is also the evidence of PW1 that on 29/09/2014 the defendant herein filed a petition against him before the District Police Chief and Crime no.1699/2014 of Mannar Police was

registered against him. It is the evidence of PW that the police has filed a final report in the said case stating that the accusation made against him in the said case is false. It is the evidence of PW1 that the defendant has challenged his title and possession of the plaint item property hence by a decree of permanent prohibitory injunction the defendant is to be restrained from causing any obstruction to his possession and enjoyment of the plaint item property.

- 9) In this case from the side of plaintiff sale deed no. 1651/10 of the SRO Mannar is marked as Ext.A1. Land Tax receipt of the plaint item property obtained from the Village Office Ennakkadu is marked as Ext.A2. Ext. A3 is the copy of possession certificate. Ext.A4 series are the cash receipts dated. 04/09/2019 issued by the Budhanoor Gramapanchayat and Ext. A5 is another land tax receipt dated. 09/04/2019 issued from Ennakkadu Village Office. Ext.A6 original power of attorney executed by the plaintiff in favour of Sugunan.
- 10) Here the plaintiff has instituted the suit by claiming title over the plaint item property. The defendant challenged the title of the plaint item property. The plaintiff produced Ext. A1 document executed by the defendant to prove the title over the plaint item property. The defendant's case is that he has executed the said document as a deed of security and not as a sale deed. Here it is apposite to note that in the trial the defendant did not appear and there was

nothing on record to substantiate his contentions. On considering Ext.A1 document it is found that the said document is a properly and validly executed document. Thus it is found that by virtue of Ext. A1 document the plaintiff has acquired title over the plaint item property. Here the defendant instituted another suit challenging the plaintiff's right over the plaint item property. The contention taken by defendant itself shows that he is challenging the plaintiff's right over the plaint item property. The contention taken by the defendant shows that the plaintiff's apprehension is genuine. Thus it is found that the plaintiff has the cause of action to institute the suit and is entitled to get a decree of permanent prohibitory injunction against the defendant. These issues are answered accordingly.

11) Issue No. 4:-

Vide discussions made in the forgoing issues; it is found that plaintiff is entitled to get a decree of permanent prohibitory injunction against the defendant. In the result, the suit is decreed, a decree of permanent prohibitory injunction is passed against the defendants restraining them from trespassing up on the plaint item property, from causing any obstruction to the plaintiff and his power of attorney holder's peaceable possession and enjoyment of the plaint item property. No cost.

Dated this the 2nd day of June, 2020.

Sd/-
MUNSIFF

AppendixWitness for the Plaintiff's side

PW1-20/03/2020-Amalesh Sharma.

Exhibits for the Plaintiff's side

A1-26/07/2010-Sale deed No.1651/10 of SRO, Mannar.

A2-27/09/2018-Land tax receipt No.1204095 of Village Office, Ennackadu.

A3-08/05/2019-Copy of possession certificate No.598/19 issued by Village Officer, Ennackadu.

A4-04/09/2019-Cash receipt No.1707048 issued by Budhanoor Grama Panchayath.

A4(a)-04/09/2019-Cash receipt No.1707049 issued by Budhanoor Grama Panchayath.

A5-09/04/2019-Land tax receipt No.946256 issued by Ennackadu Village Office.

A6-19/12/2018- Original Power of attorney executed by the plaintiff.

Witness and Exhibits for the defendant's side-Nil

Id/-
MUNSIFF

Typed by : JI

Compd by: