

IN THE COURT OF THE MUNSIF, CHENGANNUR

Present: Sri. Biju.T.V., B. Sc., LL.B, Munsiff

Friday the 13th day of April ,2018/23rd day of Chaithram, 1940.

OS NO.146/2013

(Filed on 17.06.2013)

Plaintiff:-

1. Muhammad Hassan Rawther,
aged 63 years,
S/o. Kunj Marakkar Rawthar,
Pulliyil Vadackethil Veedu,
Punthala.P.O.,
Punthala Eram Muri,
Venmony Village,
Chengannur Taluk.

By Adv. Sri. Jaison John

Defendants:-

1. Komala Gopalakrishnan,
aged 48 years,
D/o. Ramankutty,
Pullitheckethil Veedu,
Punthala Eram Muri,
Venmony Village,
Chengannur Taluk.
2. Radhamani,
aged 60 years,
D/o. Ramankutty,
Vrindhavanam,
Neduvaramcode Muri,
Cheriyannadu Village,
Chengannur Taluk.

Additional Defendants:-

3. Premchand Vijayan,
aged 28 years,
S/o. Vijayan,
Vrindhavanam,
Neduvaramcode Muri,
Cheriyannadu Village.

***Additional 3rd defendant impleaded as per order dated
10.09.2015 in IA.958/15.***

D1, D2, Addl. D3 - Exparte.

This suit having been finally heard on 02.04.2018 and the Court on 13.04.2018 delivered the following:-

JUDGMENT

Suit for fixation of boundary and injunction.

2. Plaintiff averments, in brief, are as follows;

Property described under plaintiff schedule item No.1. has got devolved upon the plaintiff by virtue of partition deed No. 1259/89 and gift deed No. 429/05, both of Chengannur SRO and the same is under the possession of the plaintiff. Item No.1 property is in a slanting position from west to east in resurvey 549/1 and the plaintiff along with his family is residing in the dwelling house situated there.

Plaint item no.2 property belongs to the second defendant and it is on the immediate southern side of plaintiff item No.1. Defendant No.1 who is the sister of D2 is now residing in the family house situated in item No.2. Item No.3 property which belongs to the first defendant is on the immediate western side of item No.2 and on the southern side of item No.1. The southern boundary of item No.1 is in a straight line. Plaintiff is having access to his item No.1 directly from the canal road on its eastern side and there exists a compound wall on the eastern boundary of item No.1 which demarcates the property with the said road. The second defendant owns property on the eastern side of item No.2 also and it is described under item No.4. There exists a compound wall between item No.1 and 4 property, which was constructed by the plaintiff, some 30 years ago. There exists compound wall on the boundary between item No.1 and 2 also. The boundaries of item No.1, 2 and 4 are thus clearly demarcated. There is a row of trees standing on the southern side of item No.1 along the boundary of properties 1 and 3. Boundary stones were also laid on the north-eastern and north western points of item No.3 and its

boundaries were thus clearly demarcated. That being so, the defendants, out of their animosity to the plaintiff, had demolished the boundaries between item No. 1 and 3 properties with the intention to annex a portion of the southern boundary of item No.1 and to reduce the trees standing there into their possession. The said portion is now lying open without any distinct boundary, due to the aforesaid acts of the defendants. Defendants have further threatened to demolish the compound wall demarcating item No.1 with 2 and 4 properties and to trespass on plaintiff's item No.1. As item No.1 and 3 are now lying without any clear demarcation, its boundary is to be fixed through the court. Defendants had tried to fix boundary unilaterally and they had withdrawn due to the timely intervention of the plaintiff. Hence the suit is laid for fixation of boundary between item No.1 and 3 and also from restraining the defendants from demolishing the existing compound wall.

3 Defendants entered appearance and filed written statement disputing the averments made in the plaint. The property description shown in the plaint schedule is factually incorrect as far as item No.2 is concerned. The plaint averment that the compound

wall constructed 30 years ago was absolutely false. The second defendant was residing 15 kms away from the plaint schedule property and she got laid up in the year 2012. She was not in a position to go to her property at that time and by taking advantage of her absence, the plaintiff had constructed compound wall by encroaching upon a portion of defendant's property. Having seen that the wall was constructed by encroaching upon her property, the second defendant had submitted an application before the Tahsildar for measuring out the property and fix the boundary. On the measurement thus conducted, it was found that the compound wall was constructed in the property belongs to the defendant and then the plaintiff filed the suit by raising false and frivolous allegations. The trees standing on the boundary is in the property of the defendants and not belong to the plaintiffs. There did not exist any boundary stone on the north eastern and north western corner of item No.3 property. It was the plaintiff who had uprooted the boundary stone laid by the Surveyor after measuring out the properties on

13-6-13. Defendants are having no objection to fix the boundary as per the resurvey plan. Plaintiff is having no cause of action against the defendant and hence the suit is liable to be dismissed.

4. Though the defendants entered appearance and filed a highly contentious written statement, they have subsequently abstained from the proceedings at the time of trial. Hence they were set ex parte.

5. Plaintiff filed affidavit in lieu of examination in chief where all the plaint averments have been reaffirmed. Ext.A1 to A3 were marked on their side. The reports prepared by the commissioner were marked as Exts. C1 to C6. Ext.A1 and A2 are the title deeds in respect of item No.1 property. Ext.A3 tax receipt shows that the plaintiff remitted tax in respect of the properties situated in resurvey No. 549/1-1 and 549/1-2. The property description shown in the plaint schedule tallies with the title deeds and Ext.A3. In Ext.C6 plan prepared by the joint commissioner and relied on by the commissioner in preparing his Ext.C4 report, item No.1 property is shown in letters GHFIEJKLMNOPQRST. It is having an extent of

58.95 Ares. The defendant's property, described under item No.2 ,3 and 4 are lying as a compact plot without having any boundaries in between them . It is shown in letters QRSTUWXYZ. It is having an extent 21.04 Ares. The boundary between plaintiff's item No.1 and item No.2, 3 and 4 owned by the defendants is shown in letters TSRQ.

6. The uncontroverted averments and the facts sworn in the affidavit together with the accompanying documents prove the plaintiff's case. In the written statement filed by the defendants, they have raised a contention that the compound wall has been constructed by encroaching upon their property and that the same is to be demolished. This shows that the plaintiff's apprehension is well justified which entitles him to the discretionary relief as sought for. In the absence of any evidence to the contrary, the reliefs sought for are only to be granted .

In the result, the suit is decreed as follows;

1. The line shown in Ext.C6 plan in letters TSRQ shall be the southern boundary of item No.1 property with item No.2 ,3 and 4 and the parties are at liberty to fix boundary along the said line.

2. Defendants or persons under them are restrained from causing any damage to the existing compound wall on the southern boundary of item No.1 and from cutting down any trees standing in item No.1 and from causing any waste or mischief therein.
3. Exts. C6 plan relied on by the commissioner in preparing his report shall form part of the decree.
4. Considering the facts and circumstances of the case there is no order as to costs.

Dictated to CA, typed by her, corrected by me and pronounced in open court on this the 13th April, 2018.

BIJU T.V
Munsiff

APPENDIX:-

Witness for the Plaintiff's side:- NIL

Exhibits for the Plaintiff's side:-

A1	21.03.2005	Certified copy of gift deed No.429/05 of SRO, Cheriyanad.
A2	23.05.1989	Certified copy of partition deed No.1259/89 of SRO, Pandalam.
A3	14.06.2013	Tax receipt No.7673152 of Village office, Venmony.

Court Exhibits:-

C1	04.02.2017	Commission report filed by Adv. M.Pramod.
C2	17.06.2013	Mahazar filed by Adv.M.Pramod.
C3	17.06.2013	Rough sketch filed by Adv.M.Pramod.
C4	06.02.2017	Commission report filed by Adv. M.Pramod.
C5	19.11.2016	Mahazar filed by Adv.M.Pramod.
C6	19.11.2016	Plan prepared by Surveyor Sri. M.K.Bhaskaran.

Munsiff

Typed by :Str
Compd.by

Copy of Judgment

in OS NO.146/2013

Dated.13.04.2018.