

IN THE COURT OF THE MUNSIFF, KOCHI

Present :-

Sri. Anirudhan T K, Additional Munsiff

Saturday the 5th day of October, 2024/13th Ashwina,1946

I.A. No. 5/2024 in O.S. No. 1/2022

Petitioner/Plaintiff:-

Beena C K, D/o.Late.Kunjan C A, aged 54 years, now residing at Thonnurukandiyil House, Kootungalchira, Edavanakad Post, Ernakulam District, Pincode-682502

By Advs . R Premchand, Dilsha A A, Veena M &
T G Rajesh

Respondents/Defendants:-

- 1 Venu C K, S/o.Late.Kunjan C A, aged 68 years, Chakalathara House, Kootungalchira, Edavankad, Ernakulam, Pincode-682502
- 2 Lathika C K, D/o.Late.Kunjan C A, aged 65 years, Thonnuru Kandiyil House, Kootungalchira, Edavankad, Ernakulam, Pincode-682502
- 3 Shoba C K, D/o.Late.Kunjan C A, aged 63 years, Vathrathundiyl House, Kootungalchira, Edavankad, Ernakulam, Pincode-682502
- 4 Harshan C K, S/o.Late.Kunjan C A, aged 59 years, Chakalathara House, Kootungalchira, Edavankad, Ernakulam, Pincode-682502
- 5 Getha C K, D/o.Late.Kunjan C A, aged 52 years, Kizhukkatharayil Valamangalam North, Thuravoor Post, Cherthala, Pincode -688532

R1 & R4 By Advs. Raju G Shenoi & Francis Nixon

R2 By Adv.Belson P Kunjappan

R3 & R5 Exparte

This petition come up for hearing before me on 04.10.2024 and the court on 05.10.2024 passed the following:-

ORDER

Petition filed to appoint an Adv. Commissioner.

2. Petitioner's contentions in brief, is as follows:-The petitioner is the plaintiff in the above case. The petitioner states that the suit is filed to set aside document No.168/2009 of SRO, Kuzhippally and for partition of the plaint schedule item No.1 and 2 properties by metes and bounds and to grant plaintiff separate and independent possession of her share of the plaint schedule property. The plaintiff's father late Kunjan.C.A was in possession of total 18 cents of land vide two documents. The 10 cents of land was obtained as per kudikidappu right from Vytila Land Tribunal vide purchase certificate issued in OA.11540/1970, which is their tharawad property. The 1st defendant was settled 5 cents out of 10 cents of property by late Kunjan. The 1st defendant had constructed a house in the said property and is residing there. The remaining 5 cents of property obtained as kudikidappu is the plaint schedule property item No.1 herein. The plaintiff's father had also purchased 8 cents of property in Sy.No.1115 of Edavanakkad village, Kochi Taluk vide document No.960/1978 of SRO, Kuzhippally. Thereafter in the year 2013 the plaintiff and other defendants released their rights to the

extent of 5 cents of property in favour of 2nd defendant. The remaining 3 cents of property out of 8 cents is the plaint schedule item No.2 property. The 3rd defendant is now residing in the property. The present position is that the 1st defendant has got his share in the family property, 2nd defendant has got her share, the 5th defendant had surrendered her share to the 2nd defendant by taking money from the 2nd defendant and the 4th defendant is residing in the plaint schedule item No.1. The 3rd defendant has not received any share though she is residing in the plaint schedule property item No.2 property. It is highly necessary to ascertain the lie and nature of the plaint schedule property and the extent of constructions in the plaint schedule property so as to know who are all in occupation of the same. Hence the petitioner prays to appoint an Adv. Commissioner to inspect the properties and report the matters mentioned in the petition.

3. The 1st and 4th respondents filed counter. 2nd respondent not filed any counter. Respondent No.3 and 4 are set exparte. The contesting respondents stated that 4th respondent became the full owner of the property specified in the plaint schedule item No.1 by virtue of joint ownership release deed No.168/1/2009 of SRO, Kuzhippally. The 4th respondent has put in possession of the property so assigned and was enjoying the property all along continuously and uninterruptedly in the property, by cultivating

coconut tree, banana tree, plantations and other crops. The release deed was executed in the year 2009 and suit is filed in the year 2022. The 4th respondent had filed a suit as OS.155/2018 in the year 2018 against the petitioner before the Prl.Munsiff Court, Kochi. Even then the petitioner does not filed any suit against 4th respondent for cancellation of the registered joint ownership release deed. The release deed was executed by the petitioner and other respondents in favour of the 4th respondent. There is a residential building the plaint schedule property which is assessed by Edavanakkad Grama Panchayath. The 4th respondent, his wife and children are living therein. The house was constructed by availing a loan from State Bank of India, Nayarambalam Branch by mortgaging the property obtained as per the release deed.

4. The petitioner is the sister of 1st and 4th respondents. The petitioner and the 4th respondent lived together till 2009. Thereafter petitioner started living along with the elder sister Lathika. The petitioner is a Government employee and receives a salary not less than Rs.30,000/- (Rupees Thirty Thousand only). The petitioner has no right over the petition schedule item No.1 property and she is in enmity to the 4th respondent and his wife and their children. The petitioner is trying to include them in the criminal case by filing false complaints against them. The petitioner has sufficient money

power, muscle power and political influence to do the same. The petitioner trespassed into the plaint schedule item No.1 property on 04.06.2018 and damaged one banana tree and also damaged door lock. The 4th respondent has got every right to own, possess and enjoy and maintain the petition schedule property and the residential building therein and its boundaries. Though the 4th respondent approached the petitioner to settle the matter but was in vain. In OS.155/2018 a temporary injunction was allowed by the Prl.Munsiff Court, Kochi which is still pending. In the suit the petitioner as well as 2nd respondent herein were examined and they deposed that they have not filed any suit to set aside joint release deed. The petitioner's case that she has no locustandi to file the petition and suit. The suit is filed on an experimental basis. The above mentioned suit as OS.155/2018 was decreed in favour of the 4th respondent. Another criminal case also was filed by the petitioner against 4th respondent but that was dismissed by the Hon'ble District and Sessions Court. The petition is filed by the petitioner with an intention to gain unlawfully and for making unlawful loss to the respondent and his family. This petition is based on the crookedness' of the petitioner and 2nd respondent. The 2nd respondent intentionally influenced the petitioner to avoid her from her residence. The petitioner has not filed any suit to aside joint ownership release deed No.2220/1/2013 dated

15.11.2013. The lie and nature of the property has already been stated in the plaint as well as in the written statement. The building in the property was constructed by the 4th respondent therefore the petition need not be allowed. Hence the petition may be dismissed with costs.

5. Heard both sides.

6. **The following point arise for consideration:-**

(i) **Whether the petition is allowable?**

7. **The point:-** The petition is for local inspection of the petition schedule item No.1 and 2 properties. It is sought to report the lie and nature of the properties, report as to who are residing in the petition schedule property and also to note the nature of the constructions made in the property. The respondents' contention is that the petition is filed with malafide intention and petition has filed criminal case against the 4th respondent with enmity and she is acting under the influence of the 2nd respondent. She has not filed any petition to set aside settlement deed executed in the year 2013, but she has sought to set aside only the release deed against the 4th respondent. Even during the pendency of OS.155/2018 there was no suit filed by the petitioner to set aside the settlement deed. The suit is barred by limitation since the settlement deed was executed in the year 2009. The petition is filed only to harass the 4th respondent and his

family and the same may not be allowed. These contentions of the respondents can be considered only in the light of detailed evidence. At this primary stage of the case the plaintiff is seeking to bring before the court some details regarding the plaint schedule property through an Advocate Commissioner. The petitioner is entitled to bring the evidence in support of his case. With regard to commission application the respondent did not state how this petition will adversely or prejudicially affect him. Therefore I find no reason to disallow the petition. The point is found accordingly.

- a) Petition is allowed. Adv. Alen Renju is appointed as the Adv.Commissioner.**
- b) Petitioner shall pay Rs.3500/- (Rupees Three thousand and five hundred only) as commission batta.**

(Dictated to Confidential Assistant, transcribed by her, corrected and pronounced by me in the open court on this the 5th day of October, 2024)

Sd/-
Anirudhan T K
Additional Munsiff

APPENDIX : Nil

Id/-
Additional Munsiff

//True Copy//

Additional Munsiff

O R D E R

I.A. No.5/2024

O.S. No. 1/2022

Dated : 05.10.2024