

IN THE COURT OF THE MUNSIF, KOCHI

Present :- Sri.Krishnankutty K.V, LL.B., LL.M, Additional Munsiff

Monday , the 20st day of March, 2017/29th Phalguna, 1938

O.S.No.47/2015

Plaintiff:-

Appukuttan, S/o.Kunjan, aged 62 years, Pulikkaparambil
House, Pensioner, Njarakkal Village and Kochi Taluk,
Pin - 682 505.

By Advs. Joseph Edakkatt & Blessy Thomas

Defendant:-

Krishnan, S/o.Kunjan, aged 60 years, Pulikkaparambil
House, Farmer, Njarakkal Village and Kochi Taluk,
Pin - 682 505.

Exparte.

This suit come up for hearing before me on 15.03.2017 and the court
20.03.2017 delivered the following:-

JUDGMENT

Suit is for fixation of boundary, recovery of possession and permanent
prohibitory injunction.

2. Plaintiff's case in brief are as follows:- Plaintiff and defendant are
brothers being children of late Kunjan and Kali. In the name of Kunjan, an
extent of 8.500 cents (3.45 Ares) of land was assigned by way of kudikidappu
purchase certificate No.6934 dated 24.11.1982 in OA.509/1970 of Vypin
Tribunal. Parents died intestate and thereafter the plaintiff and defendant
executed partition deed No.3961/2007 of SRO, Narakkal and took possession of
their respective plots. The property described in the afore said deed as A plot

situated on the northern side is allotted to the defendant and B plot having equal extent of A plot lying on the southern side is set apart to the plaintiff. The partition deed afore mentioned clearly describes side measurements and boundaries to each portions. Plot B in partition deed No.3961/2007 is described as plaint A schedule item No.1. After assigning kudikidappu in the name of Kunjnan, the father of parties to the suit, the balance land that stood on the western and southern sides was 3.84 Ares (9.500 cents) of land. It has been purchased by the plaintiff as per sale deed No.2536/1991 of SRO, Njarakkal. Ever since the date of purchase of the same, plaintiff is in possession and enjoyment of his property exclusively. Plaintiff has constructed a house thereon and is residing there with his family members. The property so purchased and enjoyed by the plaintiff is here below described as plaint A schedule item No.2. Thus plaintiff is the absolute owner and person in possession of the plaint A schedule properties (item No.1 & 2) and the same is lying contiguous. The property that belongs to the defendant and described as plot A in the partition deed No.3961/2007 of SRO, Njarakkal is described as plaint B schedule. The defendant has also constructed a house thereon and is residing with his family members. Plaint schedule properties are situated in Vypin Island, at about 15 km north-west of court complex at Thoppumpady, Kochi. From Vypin-Pallippuram PWD road there is a bye road leading towards east known as Manjanakad road 1 near to Njarakkal Bus Stop. About 1 km east of this bye road, there is a pocket road by name Pulikkaparambu road towards south, and through it there is hardly 15 mts distance to reach the plaint schedule properties. The property lies on the eastern side of this pocket road. It is submitted that the plaintiff has every right to enjoy the plaint A schedule property without any intrusion of the

defendant herein. There are no visible demarcations and the boundary markings fixed earlier have been obliterated. Upon the request of the plaintiff, Taluk surveyor Sri.Rakesh made an attempt to measure and fix the boundaries but the same was obstructed by the defendant. Unless and until the boundaries of the plaintiff A schedule is fixed as aforesaid through this court, the dispute in between the plaintiff and the defendants cannot be resolved. Hence the suit.

3. The defendant was called absent and set exparte. PW1 was examined and Ext.A1 to A4, C1 & C1(a) were marked. The proof affidavit and documents categorically prove the plaintiff claim. Therefore the decree can be safely be passed in favour of the plaintiff accordingly.

In the result, suit is decreed as follows:

1. Northern and eastern boundaries of plaintiff schedule property is fixed as shown in Ext.C1(a) sketch.
2. The defendant is restrained by an order of permanent prohibitory injunction from trespassing into the plaintiff A schedule property leaving 1.2 mt wide pathway for the use and enjoyment of plaintiff B schedule property, leading from the north-eastern end of plaintiff A schedule property towards west to a length of 15.4 mts and then turning towards south to a length of 7 mts with a bell mouth at the north-western corner which pathway has a total extent of 0.26 Ares (0.642 cents) of land and from committing any waste, mischief or any acts detrimental to the title, ownership and possession of the plaintiff in the plaintiff A schedule property including the plaintiff constructing wall or any structures thereon leaving the pathway for the ingress and egress to the defendant's B schedule property.

3. Ext.C1(a) is form part of decree.

4. Plaintiff is also entitled to the costs of the suit.

Dictated to the Confdl. Asst. transcribed and typed by her and corrected by me and pronounced in open court on this the 20th day of March 2017.

Krishnankutty K.V.
Additional Munsiff

APPENDIX

Plaintiff's Exhibits:-

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|-----|------------|---|
| A1. | 21.11.2007 | Original partition Deed No.3961/07 of SRO, Njarakkal. |
| A2. | 13.11.1991 | Copy of Sale Deed No.2536/91 of SRO, Njarakkal. |
| A3. | 09.12.2014 | Certificate from Njarakkal Service Co-operative Bank, Ltd. |
| A4. | 17.12.2014 | Copy of tax paid receipt issued from Village Office, Njarakkal. |

Defendant's Exhibits:- Nil

Plaintiff's Witness:-

PW1. 15.03.2017 Appukuttan.

Defendant's Witness:- Nil

Court Exhibits:-

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| C1. | 17.12.2016 | Commission Report filed by Adv.Mary Sheeja K.M. |
| C1(a) | | Sketch. |

Additional Munsiff

CSS

compd by: