

IN THE COURT OF THE MUNSIFF, KOCHI

Present :-Sri.Praveen Kumar .G, B.A.L., LL.B, Principal Munsiff

Thursday, the 6th day of October, 2016, 14th Aswina, 1938

I.A.No.1618/2016 in O.S.No.91/2015

Petitioner/Plaintiff:-

Rajitha .R, W/o. Sudheer, aged 33 years, C.C.21/588
E, Thundathilparambil House, Waterland Road, Palluruthy,
Rameswaram Village, Kochi Taluk - 682 006.

By Advs. Philip .T Varghese, Thomas .T Varghese, Achu
Subha Abraham, G. Padmakumar,
Sunanda Sukumaran & Nisha George

Respondents/Defendants:-

1. K.G. Madhu, S/o. Late Gopalan, aged 47 years, Kolleriparambil (Ayathumparambil) House, Vyttila Desom, Maradu Village, Kanayannoor Taluk - 682 304.
2. K.G. Sudheer, S/o. Late Gopalan, aged 44 years, Thundathilparambil House, Waterland Road, Near Sankara Narayana Temple, Palluruthy, Rameswaram Village, Kochi Taluk - 682 006.
3. K.G. Mini, D/o. Late Gopalan, aged 49 years, Thundathilparambil House, Waterland Road, Near Sankara Narayana Temple, Palluruthy, Rameswaram Village, Kochi Taluk - 682 006.
4. Sisupalan K.S., S/o. Late Vasudevan, aged 55 years, C.C.19/436, Chanipparambil House, Waterland Road, Near Sankara Narayana Temple, Palluruthy, Rameswaram Village, Kochi Taluk - 682 006.
5. Prameela Devi, W/o. Sisupalan K.S., aged 54 years, C.C.19/436, Chanipparambil House, Waterland Road, Near Sankara Narayana Temple, Palluruthy, Rameswaram Village, Kochi Taluk - 682 006.

No Vakkalath

The petition filed under Section 151 of the code of Civil Procedure to order joint trial of this suit with O.S.No.108/2015.

The petition having been finally heard on 06.10.2016 and the court on the same day, passed the following:-

ORDER

Application for joint trial.

2. Petitioner is the plaintiff and respondents are the defendants in the suit.

3. Plaintiff's case is thus: The above suit is for fixation of boundaries and consequential injunction. After receipt of summons, defendants 1 to 3 have filed O.S.108/2015 against the father of the petitioner. The property of D1 to 3 herein is the plaint 'A' schedule in O.S.108/2015. Common questions arise for determination, witnesses to be examined and documents to be marked are the same and conduct of joint trial would be convenient to the parties and will be helpful in avoiding conflicting judgments, it is alleged.

4. Respondents filed a statement of objection contending that the parties and the properties are different and that there is not identity of either the issues involved or subject matter. It is stated that O.S.91/2015 is a suit for fixation of boundary of the plaint 'A' schedule property and O.S.108/2015 is concerned with easement right in respect of a property on its eastern side, of which the petitioner's father is the plaintiff and other than this fact, there is no identity of the issues involved.

5. Heard both sides.

6. Parties are referred to as the plaintiff and the defendants, as in O.S.91/2015. That suit is for fixation of common boundary of the properties of the plaintiff as well as the defendants. O.S.108/2015 is filed by D1 to 3 against the father of the plaintiff (on the allegation that the latter is the

servient owner, who sold the property to the plaintiff), propounding a case of prescriptive easement right of way through his property. Plaintiff has a definite case that the pathway provided to the predecessors of D1 to 3, was not through her property but, the property of D4 and 5. When the plaintiff contends that there is no right of way through her property, the identity of the issues involved, atleast that fact in issue, is apparent. In sofaras the other disputed facts, which would weigh with the court while dealing with a joint trial application, are concerned, it appears that common questions arise for determination there as well. So, as rightly pointed out on behalf of the plaintiffs, consolidation of the trial of both the suits would be convenient both to the parties as well as the court and more particularly, to avoid conflicting judgments. Therefore, the application is allowed and joint trial is ordered, treating O.S.91/2015 as the leading case.

Dictated to the Confdl.Asst; transcribed and typed by her, corrected and pronounced by me in open court on this the 6th day of October, 2016.

Praveen Kumar .G
Principal Munsiff

APPENDIX: Nil

Principal Munsiff

sks
compd by: