

IN THE COURT OF THE MUNSIFF, KOCHI

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

Tuesday, the 7th day of June, 2016/17th Jyaishtha, 1938

I.A.No.921/2016 in O.S.No.104/2016

Petitioners/Plaintiffs:-

1. Pennamma, aged 65 years, W/o.Late Jacob, Thommaserry House, Anjilithara Desom, Kumbalanghi Village, Kochi Taluk, Pin – 682 007.
2. Jancy, W/o.Shibu and D/o.Late Jacob Thommaserry, aged 46 years, residing at Mootheril House, Kumbalanghi Village, Kochi – 682 007.
3. Shainy, W/o.Sabu and D/o.Late Jacob Thommaserry, aged 44 years residing at Mavelithayyil, Azheekkal, Cherthala Taluk.
4. Rani, W/o.Benny and D/o Jacob Thommaserry, aged 41 years, residing at Chaniyil House, Thuravur Cherthala Taluk.
5. Biju, S/o. Late Jacob, Residing at Thommaserry House, Anjilithara Desom, Kumbalanghi Village, Kochi Taluk, Pin – 682 007.
6. Viji, W/o.Benson and D/o.Jacob Thommaserry, residing at Vanchipurackal House, Kattiparambu, Palluruthy Village, Kochi Taluk, Pin – 682 008.

By Adv.Joseph Edakatt

Respondent/1st Defendant:-

Joseph, S/o.Devassy, aged about 40 years, Thommaserry House, Anjilithara Desom, Kumbalanghi Village, Kochi Taluk, Pin – 682 007.

By Advs. P.P.Raphealkutty & P.R.Thomachan

This petition filed under Order XXXIX Rule 1 r/w Section 151 of the Code of Civil Procedure to grant an ex-parte order of temporary prohibitory injunction restraining the respondent the first defendant in the suit, his men and agents from carrying out the work of construction of the building near to plaint A schedule property without satisfying this Hon'ble Court that he has not trespassed in to plaint A schedule property and that he is not carrying out constructions in violation of Kerala Panchayath Building Rules.

This petition come up for hearing before me on 31.05.2016 and the court on 07.06.2016 passed the following:-

ORDER

This is a petition for order of temporary prohibitory injunction till the disposal of the suit restraining the respondent the first defendant in the suit, his men and agents from carrying out the work of construction of the building near to plaint A schedule property without satisfying his court that he has not trespassed into plaint A schedule property and that he is not carrying out constructions in violation of Kerala Panchayath Buildings Rules.

2. Plaintiffs' case in brief is as follows:-Petitioner's father late Jacob Thommaserry who died on 12.4.2013. He owned 14.276 cents of land in Sy.No.337/3 and 336/1 of Kumbalangi Village by virtue of sale deed No.2736/1980 of SRO, Kochi. Prior to the purchase of said property he constructed a house in the said property. He is residing with his family and mother the first petitioner in the said house. 5 cents of land was sold to the

first defendant/respondent towards the north and western side of 14.276 cents of land. The suit as plaint B schedule property. The first defendant /respondent has started to make construction of a house in the property by encroaching into plaint A schedule on its western side. Recently when we measured the balance land it is understood that there is encroachment made by the first defendant as well as the 2nd defendant who is none other than the younger brother of his father. Himself and mother requested the first defendant to stop the construction activities so as to ascertain the exact common boundaries between A schedule and B schedule. But he is undertaking construction of his building in a war footing especially when we expressed doubt regarding the common boundary. Therefore it is most urgent to issue an order to stop further construction till the property is properly fixed by a competent surveyor. Hence the petition.

3. The respondent filed counter stating that the plaint B schedule property was purchased by respondent from the predecessor of the plaintiff in the above suit as per sale deed No.411/2012 of SRO, Kochi. The remaining property lying on the eastern side of plaint B schedule property owned by the plaintiff is the plaint A schedule property. For the purpose of sale of the plaint B schedule property in his favour the plaint B schedule property was measured and demarcated by the plaintiffs with the assistance of the village authority in his presence. After execution of the sale deed he constructed a fence on the eastern boundary of the plaint B schedule property in the

presence of the plaintiffs. The said fence is situated in the common boundary of the plaint A and B schedule properties. The plaint B schedule property was purchased by him for constructing a residential house. At the time of purchase of the plaint B schedule property the western boundary of plaint B schedule was a thodu. Since a new road was constructed along the western boundary of the property after reclaiming the said thodu he made some deviations during construction of the building and hence prepared a revised plan and drawings showing the deviations to obtain revised permit. It is submitted that the construction made by him as mentioned above will not in any way in violation of the Kerala Panchayath Building Rules. The plaintiffs filed a complaint regarding the construction carried on by him in the plaint B schedule property and the oversear and other officials of the panchayath inspected the constructions going on and they realised that the complaint made by the plaintiffs have no basis. Hence to dismiss the petition.

4. Heard both sides.

5. Ext. A1 & A2, B1 to B11 and C1 were marked.

6. From the above, the following points arise for consideration:

1. Whether the petitioner is entitled to get an order of interim injunction as prayed for?

2. What shall be the proper order?

7. Point No.1 & 2:- The main contention of the petitioner is that respondent is making construction encroaching into the petition A schedule

property. It is also done violating Panchayath Building Rules. Hence the suit is filed for fixation of boundary and mandatory injunction. Respondent contended that he purchased plaint schedule property as per Ext.B1 document in the year 2012 and at the time itself B schedule property was measured and demarcated and fence was also constructed in the eastern boundary at the presence of petitioner and approved plan and permit has been obtained and building construction has been in progress. The advocate commissioner reported that there is fencing on the eastern side of the respondent's property and the building is constructed in the distance of 60 cm from that fence. The original approved plan issued to the respondent by Corporation is Ext.B2. As per Ext.B11 document produced it can be seen that respondent seems to have construction made by respondent is in violation of the approved plan and it has been regularized by Ext.B11 order on payment of compound fee for the Corporation and regularized plan was issued as per Ext.B9. The petitioner admitted that sale of 5 cents of land to respondent. But existence of fence on the western boundary was not stated in the petition. The documents produced by the respondent shows that there is violation of approved plan. But the same has been seen regulation and regularized plan has been issued as per Ext.B9. The above aspect is seen from Ext.B9 to 11 documents. The Corporation has been seems to have regularized the violation as per the building rules. The legality and propriety of the order can be considered only at the time of final evidence. Also

encroachment towards A schedule property is not seen as per the above materials before the court. It is also to be noted that there is existing fence separating A and B schedule property. Hence the petitioner has not able to bring out the prima facie case to grant injunction at this stage. Hence petition will be heard along with this suit.

Dictated to the Confdl.Asst, transcribed and typed by her corrected and pronounced by me in open court on this the 7th day of June 2016.

Krishnankutty K.V.
Additional Munsiff.

APPENDIX :-

Petitioner's Exhibits:-

- A1. Certified copy of Sale Deed No.2736/1980 of SRO Kochi
- A2. 21.03.2002 Tax paid receipt.

Respondent's Exhibits:-

- B1. 25.01.2012 Copy of the Sale Deed No.411/12 of SRO, Kochi.
- B2. Copy of Building Plan.
- B3. 03.10.2014 Copy of Building permit No.D169/14-15 issued from Kumbalangi Grama Panchayath.
- B4. 28.03.2016 Copy of certificate No.D2-2412/2011 issued from Fisheries Deputy Director, Ekm.
- B5. Copy of the revised house plan.

- B6. 07.04.2016 Receipt for payment of building regularisation fee.
- B7. 04.01.2016 Copy of the complaint given by the plaintiff to the Secretary Kumbalangi Grama Panchayath.
- B8. Copy of receipt submitted by the oversear LSGD section Kumbalangi Grama Panchayath dated 04.01.2016 & 07.04.2016.
- B9. 24.05.2016 Copy of the revised plan of Joseph Thomassery, Kumbalangi approved by the Secretary, Kumbalangi Grama Panchayath.
- B10. 24.05.2016 Copy of the order of approving the revised house plan.
- B11. 23.05.2016 Report of site inspection of overseer Kumbalangi Grama Panchayath.

Witness for both sides:- Nil

Court Exhibits:-

- C1. 04.04.2016 Commission report filed by Adv. Commissioner K.P.Ramadevi.

Additional Munsiff

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compd by: