

IN THE COURT OF THE MUNSIFF, KOCHI

Present :- Smt. Sai Vani K.R., LL.B., Additional Munsiff

Monday, the 6th day of January, 2014/ 16th Pousha, 1935

I.A.No.2627/2012 in O.S. No.340/2012

Petitioners/Plaintiffs:-

1. Raman, aged 63, S/o.Late Bappi, Koikkara House, Kumbalangi South, Kochi-7, now residing at CC 41/1964, Veekshanam Road, Kochi-18
2. Sarvan alias Sarvothaman, aged 58, S/o. Bappi, Koikkara House, Kumbalangi South, Kochi-7.

By Adv.M/s.Paul Parakkal, K.S.Sathis Babu and Nimmy Joseph

Respondent/Defendant:-

M.B.Balakrishnan, aged about 75, S/o.Bappi, residing at Koikkara House, K.P. 10/341, Kumbalangi South, Kochi-7

By Adv. Suraj Krishna B.S.

This petition filed Under Section 151 read with order 39 Rule 1 and 2 of the Code of Civil Procedure to pass an order of interim prohibitory injunction restraining the respondent and his men from reducing the existing width of the plaint C schedule pathway not to put up any structures in the plaint C schedule pathway.

This petition come up for hearing before me on 11.12.2013 in the presence of counsel for both sides and having stood over for consideration on 06.01.2014 the court passed the following:-

ORDER

This petition is filed under order 39 Rule 1 and 2 read with Sec. 151 CPC for temporary injunction restraining the respondent and his men from reducing the existing width of plaint C schedule pathway or putting up any constructions in the

plaint C schedule property till the disposal of the suit.

2. The petitioners case is that the petitioner's predecessors started residing in the plaint A schedule property as kudikidapukars and they had purchased the kudikidappu right over 10 cents of property and have been in absolute possession and enjoyment of the property and the building situated therein. The respondent started residing in the property on the east of plaint A schedule property. The pathway of the petitioners to connect towards east is through southern side of the respondent residence. Respondent purchased 10 cents of property as his kudikidappu and the pathway used by the petitioner is through the southern portion of the kudikidappu purchased by the respondent. The pathway being so used by the petitioners has a width of 1.30 mts on the eastern side of the respondent's property and 1.50 mts width on the western portion abutting to the plaint A schedule property and this pathway is shown plaint C schedule pathway. Respondent has constructed a temporary fence on the northern side of pathway. The petitioners and their family members were using plaint C schedule pathway peacefully and openly for more than 50 years as of right of easement by prescription for ingress and egress from plaint A schedule property. The petitioners and their family members have no other pathway for their ingress and egress to the public road on the east. Now that the respondent is intentionally trying to eliminate plaint C schedule pathway by trying to reduce the width of the said pathway, this petition is filed seeking temporary injunction restraining the respondent and his men from reducing the existing width of plaint C schedule pathway or putting up any constructions in the plaint C schedule property till the disposal of the suit.

3. Respondent filed counter affidavit stating that in O.S.315/12 which was filed by this respondent against the petitioner herein the subject matter in issue is one and the same and an exparte injunction order is in force and the respondent has not taken any effort to get the injunction order vacated. Hence the respondent prays for the dismissal of this petition.

4. Heard both sides. Commission report is marked as Ext. C1 and sketch marked as Ext.C1 (a).

5. Here the only point to be considered is whether the petitioners are entitled to get an injunction as prayed for ?

6. Admittedly there is a suit pending before this court ie.O.S.315/12 which was filed by the defendant herein seeking permanent prohibitory injunction restraining the defendants therein from trespassing into the plaintiff A schedule property otherwise than for using the plaintiff B schedule pathway as a foot path and also from causing any obstruction or inconvenience to the plaintiffs by constructing walls or fences to plaintiff A schedule property leaving a gap of 3 links on both termini of the B schedule pathway. The plaintiff in O.S 315/12 is the defendant in O.S.340/12 and the plaintiffs in O.S 340 /12 are the defendants in O.S.315/12. The subject matter and issues are directly and substantially the same in both the suits. A commission was taken out in this suit. Admittedly OS.315/12 is the first suit. The plaintiffs/petitioners herein are the defendant in that suit. An ex parte injunction was granted in that suit by this court. As per counter affidavit filed by this respondent ie, plaintiff in OS.315/12, the petitioners herein had entered appearance on 8.11.2012 in OS.315/12 and had sought adjournment on at least two occasions for filing written statement as well as counter affidavit to the injunction petition in OS.315/12. From the records it is also clear that prior to filing of OS.340/12 no effort has been made by the plaintiffs herein to get the injunction vacated. Apparently the petitioners are not in an adverse state of affairs than that was prior to filing OS.340/12 and also during the sustenance of injunction granted in OS.315/12. Ext. C1,C1(a) report would show that no new circumstances have arisen which would be prejudicial and would cause undue hardship to the petitioners. The conduct of the petitioners vis-a-vis the injunction in OS.315/12 is material at this juncture. As discussed earlier the petitioners have not brought forth any change in circumstances that is either prejudicial or that would

cause undue hardship to them. As such the balance of convenience in the peculiar circumstances of this suit is made against the petitioners. Petitioners have failed to establish a prima facie case for an injunction has sought in the petition. Hence I find that there is no merit in the petition and it is only to be dismissed.

In the result, petition is dismissed. No order as to cost.

Confdl. Asst. transcribed and typed by her and corrected by me and pronounced in this open court on this the day of 6th day of January 2014.

Sai Vani K.R.
Additional Munsiff

APPENDIX :

Petitioners' Exhibits:- Nil

Respondents' Exhibits:- Nil

Witness for both sides: Nil

Court Exhibits:-

C1 30.11.2012 Commission Report filed by Adv.Sajan Antony
C1(a) Rough Sketch

Additional Munsiff

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compd by: