

IN THE COURT OF THE MUNSIFF, KOCHI

Present:

Sri.Aneesh Chacko. K, Principal Munsiff

Tuesday, the 29th day of March 2022/8th Chaithra, 1944.

O.S. No. 155/2013

Plaintiff-

Joseph, aged 77 years, S/o late Kakko, Kannanketil House, Kumbalangy Desom, Kumbalanghy Village, Kochi Taluk(Died).

By Advs. A.Balagopalan, Rajagopalan.A and Sreejith M.S

Defendants:-

1. Shiya, aged about 25 years, D/o Joshi, Vallomparambil House, Kumbalangy Desom, Kumbalanghy Village, Kochi Taluk.
2. Shimi, aged about 22 years, D/o Joshi, Vallomparambil House, Kumbalangy Desom, Kumbalanghy Village, Kochi Taluk.

By Adv. O.J.Alfred

Plaintiff/Counter claim defendants:-

1. Joseph, aged 77 years, S/o late Kakko, Kannanketil House, Kumbalangy Desom, Kumbalanghy Village, Kochi Taluk (Died).
- Adtl. 2. Baby, aged about 78 years, W/o Joseph, Kannanketil House, IX/123 (New 14/395) Kumbalanghi Desom, Kumbalanghi Village, Kochi Taluk.
3. Shiny, aged about 58 years, W/o Pious, Kannanketil House, Kumbalanghi Desom, Kumbalanghi Village, Kochi Taluk.

4. Blessy, aged about 54 years, W/o Biju, Ward No.6, Veliyath House, Kumbalangi Village, Kumbalangi Desom, Kochi 682 007.
5. Tessa, aged about 48 years, W/o Denny, Kannankeril House, Kumbalangi Desom, Kumbalangi Village, Kochi Taluk.
6. Lovely, aged about 45 years, W/o Xavier, Kocheriyil House, Ward No.9, Kumbalangi Desom, Kumbalangi Village, Kochi Taluk, Pin 682 007.

(Addl. 2 to 6 impleaded as per order in IA No. 14/2022 dtd. 24.03.2022)

P1 - Died
P2 - P6 - (Exparte)

Defendants/Counter claim plaintiffs:-

1. Shiya, aged about 25 years, D/o Joshi, Vallomparambil House, Kumbalangi Desom, Kumbalangi Village, Kochi Taluk.
2. Shimi, aged about 22 years, D/o Joshi, Vallomparambil House, Kumbalangi Desom, Kumbalangi Village, Kochi Taluk.

By Adv. O.J.Alfred

This suit and counter claim having been finally heard on 28.03.2022 and the court on 29.03.2022, delivered the following:-

JUDGMENT

The suit for fixation of boundary and permanent prohibitory injunction.

2. The case of plaintiff in short is as follows:- Plaintiff obtained 50 cents as per document numbers 1562/1989, 4390/1991 and 4454/1981 of SRO

Kochi. Plaintiff assigned 10 cents as per document number 4390/1991 and the remaining 40 cents of property owned and possessed by plaintiff is A schedule property. The property of defendants lies on southern side. The way to A schedule starts from Temple road on south, proceeds north through the property of defendants and it reaches southeastern portion of A schedule and then proceeds west along the southern boundary of A schedule. Such way is B schedule. Plaintiff has easement by prescription over such B schedule. Plaintiff put up a temporary fence on southern side of residential building. Defendants raised unnecessary disputes regarding the boundary and destroyed the southern boundary of A schedule. On the application of defendants, Taluk Surveyor conducted a false measurement and showed a line as southern boundary of A schedule. Defendants took advantage of such wrong measurement. Hence the plaintiff prays for fixation of southern boundary of A schedule and for permanent prohibitory injunction restraining defendants from closing down B schedule way, making any structure in B schedule way and also against trespassing into A schedule and putting up any fence or wall on the southern side of A schedule and also from doing any act detrimental to rights of plaintiff.

3. Defendants filed written statement with counterclaim raising contentions in short as follows:- It is false that plaintiff obtained another 10 cents

as per partition deed No.4456/1981. Even prior to the purchase of 40 cents, the plaintiff had a case that he was in possession of 40 cents of land. Such contention was found against in OS 215/1983. Only after such litigation, plaintiff purchased 30 cents as per document number 1568/1989 and 10 cents by document No.4390/1991. So it can be seen from the document that plaintiff is not in possession of entire A schedule. The southern boundary shown to A schedule as pathway, is incorrect. The road on southern side came into existence only about 15 to 18 years back. Prior to it, it was a water channel. The alleged B schedule is a passage provided by the defendants to the purchasers when two plots were assigned in 2006 and it has a width of 1.5 meters. The entire property on southern side of 30 cents of plaintiff was lying open till 2006. So, the averment that plaintiff has easement over B schedule is false. When plaintiff constructed fence on southern side of 30 cents, by encroaching into the property of defendants, the defendants questioned the same. Then plaintiff agreed that, if on measurement it is found that the fence is in the encroached portion, he will demolish it. On measurement, fence was found to be in encroached portion. But, plaintiff changed his stand and filed the suit claiming more land than he is actually entitled to. Defendants did not destroy the fence put up by plaintiff encroaching into the property of defendants. On measurement it was found that

an extent of more than one cent is within the fence put up by plaintiff encroaching into the property of defendants. Defendants did not make any attempt to close the passage. Plaintiff has passage towards north and he is using the same even presently. Plaintiff trespassed into the property of defendants and illegally constructed a fence on northern boundary. Defendants are entitled to get it demolished and to recover possession on the strength of title. Plaintiff is liable to surrender vacant possession of counterclaim B schedule property. Plaintiff after getting the case removed from list, started to construct a motorable passage, by trespassing into the counterclaim A schedule, in north-south direction by connecting the same to the passage provided by defendants to the purchasers on the western side. The act of plaintiff is to make believe that he has got direct entrance from the pathway through counterclaim A schedule. Plaintiff is bound to remove and dismantle the waste building materials laid on the eastern half portion of counterclaim A schedule. Hence the counterclaim plaintiff prays for directing the plaintiff to demolish the fence constructed on the northern side of counterclaim A schedule and surrender vacant possession of B schedule to the defendants and on failure on part of counterclaim defendants, to get it done through court. Counterclaim plaintiffs also pray for permanent prohibitory injunction restraining the plaintiff and men from trespassing into counterclaim A

schedule property and from obstructing the construction of compound wall or fence on the northern boundary of counterclaim A schedule. Counterclaim plaintiff prays for mandatory injunction directing the plaintiff to remove or dismantle the C schedule passage constructed by dumping waste building materials.

4. Counterclaim defendant filed written statement raising contentions in short as follows:- Defendants have no right over counterclaim A and B schedule properties. Defendants attempted to close B schedule way. The allegation that plaintiff trespassed into the property of defendants and illegally constructed fence, is false. Defendants are not entitled to demolish the boundary wall or to recover possession of property as alleged. As the property described in counterclaim A schedule, really belongs to plaintiff, there is no necessity for the plaintiff to trespass into the said property. Defendants are not entitled to permanent prohibitory injunction. Defendants have no cause of action.

5. Sole plaintiff expired and no steps are taken yet for impleadment of heirs and there is no representation for plaintiff. The heirs of counterclaim defendant No.1 were impleaded in the counterclaim. Counterclaim defendant No.1 expired and other counterclaim defendants are exparte. DW1 was examined on the side of counterclaim plaintiffs and documents were marked.

Commissioner reports and sketches were also marked. Since the heirs of plaintiff are not impleaded the suit is to be dismissed. So the question whether plaintiff schedule properties are identified correctly is not considered. The commissioner reported that 10 cents as per document number 4454/1981 cannot be identified as per the title deed descriptions. On the southern boundary of 30 cents, the commissioner noted some trees which includes fencing. Creation of way by using waste building materials, could be seen from Ext.C2 report. There is no contra evidence. The evidence of counterclaim plaintiffs remains unchallenged and hence proved. Hon'ble High Court of Kerala has issued a time bound direction in the case. No steps are taken yet for impleadment of heirs of plaintiff in the suit.

Hence in the result, **the suit is dismissed without costs and the counterclaim is decreed with costs** as follows:-

- 1. Counterclaim defendants No.2 to 6 are directed to demolish the fence constructed on the northern side of counterclaim A schedule property and surrender vacant possession of counterclaim B schedule property to the defendants within two months. On failure on the part of counterclaim defendants, the counterclaim plaintiff is entitled to get it done through court.**

2. Counterclaim defendants No.2 to 6 and men are restrained by permanent prohibitory injunction from trespassing into counterclaim A schedule, and from obstructing construction of compound wall or fence on northern boundary of counterclaim A schedule.
3. Counterclaim defendants No.2 to 6 are directed by way of mandatory injunction to remove or dismantle the C schedule passage constructed by dumping waste building materials in the eastern half portion in north-south direction slanting towards south-east corner by leaving a triangle portion as waste land in the counterclaim A schedule property.

Dictated to the Confdl. Asst. transcribed by her, corrected and pronounced by me in the open court on this the 29th day of March, 2022.

Sd/-
Aneesh Chacko K.
Principal Munsiff

APPENDIX:-

<u>Plaintiff's/Counter claim defendants Exhibits:-</u>	Nil
<u>Defendants /counter claim plaintiffsExhibits:-</u>	

B1	26.03.1983	Certified copy of Complaint in O.S. 215/1983 filed before the Hon'ble Munsiff Court, Kochi.
B2	20.09.1983	Certified copy of written statement in O.S.215/1983 filed before the Hon'ble Munsiff Court, Kochi.
B3	28.10.1985	Certified copy of Judgment in O.S. 215/1983 of the Hon,ble Principal Munsiff Court, Kochi.
B4	16.05.2013	Intimation from Taluk Surveyor, Kochi.
<u>Plaintiff's/Counter claim defendants Witness:-</u>		Nil
<u>Defendants/counter claimplaintiffs Witness:-</u>		
DW1	28.03.2022	Shimi
<u>Court Exhibits:-</u>		Nil
C1	13.02.2017	Commission Report Filed by Adv. Joseph Edakkattu
C1(a)	-	Sketch
C1(b)	-	Rough sketch
C2	28.02.2022	Commission Report Filed by Adv. Biniyamin.K.S
C3	-	Commission Report filed by Adv. M.K. Murari.
C3(a)	-	Rough sketch
<u>Court Witness:-</u>		Nil

**Id/-
Principal Munsiff**