

IN THE COURT OF THE PRINCIPAL MUNSIF, KOCHI

Present:

Sri.Aneesh Chacko.K., Principal Munsiff

Tuesday, the 1st day of December, 2020/10th Agrahayana, 1942

I.A. No. 1/2020 and I.A.No.6/2020 in O.S.No. 265/2020

Petitioner/Plaintiff:-

Rose Mary Bindu K.F, W/o M.A.Joseph, Maliyekkal House, Kochi Taluk, Palluruthy Village, Mundamveli P.O, Pin-682 507.

By Adv.C.S.Yesudas

Respondent/Defendant-

M.X.Antony, S/o Xavier, Maliyekkal House, Kochi Taluk, Palluruthi Village, Mundamveli P.O, Pin 682 507.

By Advs. Johnson Mathew Manayani and Jeevan Mathew Manayani

I.A 1/20 are filed under Order XXXIX r/w S 151 of the Code of Civil Procedure to pass an order of temporary injunction restraining the respondent making any kind of obstruction to the plaintiff or her agents/workmen from using the plaint B Schedule pathway or committing waste in the schedule property. I.A 6/2020 filed under Section 151 of the Code of Civil Procedure to direct the SHO Thoppumpady Police Station to give adequate police assistance to the petitioner/plaintiff and her workmen to enter into her property through the Plaint B schedule pathway as per the injunction order in I.A No.1/20.

These petitions are having been heard on 24.11.2020 and the court on 01.12.2020, passed the following:-

COMMON ORDER

IA.1/2020

The application is filed by petitioner, who is the plaintiff for a temporary injunction under Section Order 39 Rule 1 r/w Section 151 CPC, restraining the respondent from making any obstruction to the plaintiff/petitioner to the use of B

schedule pathway or committing any waste in the scheduled property, till the final disposal of the suit.

2. The case of petitioner in short is as follows:- Petitioner is the owner in possession of plaint A schedule property as per document number 1074/2019 of Kochi SRO. Plaint B schedule pathway lies on the eastern side of A schedule which leads to the corporation road. Respondent who resides on northern side of property of petitioner, also uses B schedule pathway for ingress and egress to his property. Respondent has right only to use B schedule way. Respondent installed a temporary gate at the northern end of plaint B schedule way with the consent of petitioner. Respondent now obstructs the entry of workmen of petitioner, who were engaged to construct a building in the property; and the attempt of respondent is to compel petitioner to sell the property for a cheap rate. Respondent refused the request to remove the gate or not to lock it, in spite of demand of petitioner. Respondent declared that he will not allow entry through B schedule. Such attempt if succeed, will cause irreparable hardship and loss; and principle of balance of convenience is in favour of the petitioner.

3. The case of respondent in short is as follows:- The suit is not maintainable. The relief sought in the suit is injunction simplicitor. The aim of petitioner is to get a mandatory injunction to remove the gate, which is not legally maintainable in view of the fact that there is no prayer for mandatory injunction or declaration. As per the affidavit filed along with injunction application, respondent installed a gate at the northern end of plaint B schedule property. The averment that gate was installed with the consent of petitioner is absolutely incorrect. Petitioner has no legal right over plaint B schedule property. The gate was installed much earlier. Petitioner has alternate pathway. Petitioner failed to deliver copies of plaint, injunction order and documents as contemplated under Order 39 Rule 3

CPC. Respondent prays for rejection of the application with costs to the respondent.

IA.6/2020

4. The application is preferred u/s 151 CPC by the plaintiff seeking a direction to SHO, Thoppumpady police station to give adequate police assistance to petitioner and work men to enter into the property of petitioner through B schedule pathway as per Order in injunction I.A 1/20.

5. The case of petitioner in short is as follows:- The court granted interim injunction in I.A 1/20. On 15.10.2020, the commissioner inspected the property and the injunction order was communicated to the respondent. At that time brother of respondent declared that they will close the gate. On 16.10.2020 the workmen of plaintiff as well as the person engaged to provide electric connection could not enter plaint B schedule property since the gate was locked. The respondent purposefully did not open the gate though knocked several times. Such locking amounts to total disobedience to the order of court.

6. Apart from the contentions raised in the counter filed in I.A 1/20, respondent raises some additional objections as follows:- Plaintiff filed application for police protection for implementing exparte interim order, which is unheard of. In the writ petition, Hon'ble High Court directed the police officials not to harass respondent herein or family members. The application is frivolous and is an abuse of process of law.

7. The points arising for consideration are in as follows:-

- 1) Whether the petitioner has made out any prima facie case ?
- 2) Whether the petitioner is entitled to temporary injunction restraining the respondent from causing obstruction to the usage of B schedule pathway or committing waste therein ?
- 3) Whether the petitioner is entitled to police assistance for passage through B schedule pathway ?

4) Reliefs and costs ?

8. Exts.A1 to A10 and C1 to C3(a) were marked. No documents were marked from the side of respondent. Counsel of respondent objected the marking of commission reports Ext.C1,C1(a) and C2 and he argued that notice was not given to respondent with respect to such inspections.

Points No.1 to 3:- Ext.C1 and C1(a) report states that there is a way on the southern side of the road which reaches plaint A schedule property.

9. On perusal of the injunction application it is clear that there is no right specifically pleaded with respect to the alleged way. It is stated in the application that defendant also has right to use B schedule way like petitioner. There is no case for the petitioner that the property shown as B schedule belongs to petitioner. No documents are tendered to show that he obtained any right of way through B schedule. There is no specific plea that he obtained right of way by any document. On going through the plaint it is specifically stated in paragraph 9 that plaintiff and defendant have no ownership over B schedule. Specific plea as to right of way is conspicuously absent in the plaint also.

10. Ext.A1 is the photocopy of title deed number 1074/2019 of Kochi SRO in favour of plaintiff/petitioner. Such document does not speak of any right of way. The counsel of petitioner argued that right of way is obtained by the petitioner as per document. It is true that in Ext.A1 photocopy of title deed, on the eastern side of such property the boundary is shown as way. The existence of such way on the eastern side is further proved by back documents Ext.A2 4168/1999, Ext.A3 4656/1999 (photocopies). Such back documents also does not speak of right of way through such way shown on east. It was argued that right of way is obtained by way of document. But neither the title deed nor the back documents provide such right. The mere fact that way was shown on the boundary of the title deed cannot be considered as something which provides any right of way.

11. As regards compliance of Order 39 Rule 3, plaintiff filed affidavit that copies of plaint, affidavit, petition and documents were sent by registered post on 15.10.2020. The postal receipt of the said date is produced. The affidavit is filed on 15.10.2020 itself. Hence this court is of the view that Rule 3 is complied.

12. The case of petitioner in I.A 6/20 is that the gate was locked which is in disobedience to the order of injunction. The counsel of respondent argued that there is no prayer for temporary mandatory injunction to remove the lock. It is stated in the plaint that defendant installed the gate with the consent of plaintiff. Counsel of respondent referred to the decision of Hon'ble High Court of Kerala in Kunhumamad v. Bavahaji AIR 1999 Kerala 383 which held that courts should be reluctant to grant a police protection on the basis of exparte injunction orders.

13. Hon'ble Supreme Court in Hindustan Petroleum Corporation Limited v. Sriman Narayan 2002 KHC 1288 held that the object of interlocutory injunction is to protect plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial. In the present case such right of plaintiff/petitioner is not prima facie made out.

14. Hon'ble Supreme Court in Kashi Math Samsthan and another v. Srimad Sudhindra Thirtha Swamy and another 2010 KHC 6050 held as follows; "It is well settled that in order to obtain an order of injunction, the party who seeks for grant of such injunction has to prove that he has made out a prima facie case to go for trial, the balance of convenience is also in his favour and he will suffer irreparable loss and injury if injunction is not granted. But it is equally well settled that when a party fails to prove prima facie case to go for trial, question of considering the balance of convenience or irreparable loss and injury to the party concerned would not be material at all, that is to say, if that party fails to prove prima facie case to go for trial, it is not open to the court to grant injunction in his favour even if, he has made out a case of balance of convenience being in his

favour and would suffer irreparable loss and injury if no injunction order is granted”.

15. In the light of above discussions petitioner failed to make out any prima facie case. The principles of balance of convenience and irreparable loss and injury, though are in favour of petitioner, as the petitioner has no other way, is of no use to the petitioner, as such considerations are immaterial in view of the judgment of Hon’ble Supreme Court referred above, as there is no prima facie case made out for petitioner.

16. Hence in the result all the above points are found in favour of respondent. Petitioner is not entitled to any of the reliefs claimed.

17. Point No.4:- In the light of forgoing discussions, both 1/20 and 6/20 are dismissed with costs.

Dictated to the Confdl. Asst. transcribed by him, corrected and pronounced by me in the open court on this the 01st day of December, 2020.

Sd/-
Aneesh Chacko.K
Principal Munsiff.

APPENDIX :

Petitioners Exhibits:-

- A1 28.03.2019 True copy of the settlement deed No.1074/2019, Kochi SRO.
- A2 24.09.1999 True copy of the settlement Deed No.4168/1999 of Kochi SRO.
- A3 23.10.1999 True copy of the Sale deed No.4656/1999 of Kochi SRO.
- A4 01.10.2020 True copy of Tax receipt issued by the Village Office, Palluruthy.
- A5 24.05.2019 True copy of the Possession Certificate No.39918815 with Thandaper No. 14228 issued by the Village Office, Palluruthy.
- A6 14.05.1999 Original of the Location Sketch prepared by the Village Office, Palluruthy.
- A7 04.04.1989 Original of the Sale Deed No.1083/1989.

- A8 18.10.1989 True copy of the Sale Deed No.3028/1989.
A9 07.02.1992 True copy of the settlement deed No.610/1992.
A10 27.10.2020 Lawyer notice.

Respondents Exhibits:- NIL

Witness for both sides:- NIL

Court Exhibits:-

- C1 20.10.2020 Commission report submitted by Adv. Anilamol K.K
C1(a) Rough sketch
C2 21.10.2020 Commission report submitted by Adv. Anilamol.K.K
C3 11.11.2020 Commission report submitted by Adv. Sreejith M.S.
C3(a) Rough sketch.

Id/-
Principal Munsiff.

BL
compd. by: