

IN THE COURT OF THE MUNSIFF, KOCHI

Present :-

Smt. Karthika. K., Additional Munsiff

Friday the 08th day of July, 2022/ 17th Ashadha, 1944

O.S. No. 497/2015

Plaintiff:-

Joseph Joy, S/o. late Antony, aged 54 years, Naduvilathara House, M.V. Raman road, Kumbalanghi Village and Kochi Taluk Pin 682 007.

By Advs. Joseph Edakatt and Shymol A.B

Defendants:-

1. Thampi @ Jacob, S/o. late Antony, aged 51 years, Naduvilathara House, M.V. Raman road, Kumbalanghi Village and Kochi Taluk, Pin 07.
2. Jehu Jaison, S/o. Joseph, aged 28 years, Thaippadath House, working in Indian Navy, Kumbalanghi Village and Kochi Taluk, Pin 682 505.
3. Ashiya Christy Mona Jacob, D/o. Thambi @ Jacob and W/o. Jehu Jaison, 22 years, Thaippadath House, Kumbalanghi P.O, Kochi 682007.

By Adv. K.G Sarath Kumar

This suit come up for hearing before me on 30.06.2022 in the presence of above advocate concerned and having stood over for

consideration on 08.07.2022 the court delivered the following:-

JUDGMENT

Suit is one for fixation of boundary and permanent prohibitory injunction.

2. **The plaintiffs' case, in brief, as follows:** Plaintiff is the owner and in possession of 20 cents of land in Sy.No.1044 of Kumbalangi village obtained by him vide settlement deed No.1187/2000 of Kochi SRO. The said property is described as plaint A schedule property. The 1st defendant is the younger brother of the plaintiff. 3rd defendant is his daughter and the 2nd defendant is her husband. The father of the plaintiff and the 1st defendant executed a document bearing No. 3410/2000 of Kochi SRO in favour of the 1st defendant. After four months of execution of settlement deed No.1187/2000. The 1st defendant was assigned 14 cents of land in Sy.No.1044 of Kumbalangi village as item No.2 and another 12.983 cents as item No.3. The said property is described as plaint B schedule

property. The prior deed mentioned in the settlement deed of the plaintiff is document No.493/1952 of Kochi SRO whereas the prior deed mentioned in sale deed No.3410/2000 in favour of 1st defendant is document No.1813/1961 and document No.167/1972 of Kochi SRO. As per document No.493/52 plaintiff predecessor purchased 42 cents of land in Sy.No.1044 besides 6 cents of land in Sy.No.1697. Plaint A and B schedule is lying without any boundary or demarcation. The wife of the 1st defendant started raising unnecessary disputes and even caused obstruction to the plaintiff from taking usufructs from one of the yielding coconut trees which the plaintiff had planted. In order to settle the dispute amicably the plaintiff preferred an application before Tahsildar Kochi for getting the boundary of plaint A schedule fixed . The Tahsildar deputed taluk surveyor to measure the property and to fix the boundary. At first the taluk surveyor measured the property and he fixed peg marks in the common boundary. But no sketch was prepared by the taluk surveyor. Upon a complaint preferred before the Tahsildar, Kochi the Tahsildar enquired the matter with taluk surveyor and he

informed the Tahsildar that some mistakes crept in identifying the property and the peg mark placed in the property cannot be relied upon. Later the plaintiff preferred a petition before the legal service authority, Kochi against Shiny Jacob, wife of 1st defendant. It was numbered as PLP.137/2014 and disposed off on 09.10.2014 as not settled. In the meanwhile the 1st defendant transferred 4.86 Ares of land in favour of defendant No.2 and 3 vide sale deed No.3926/2014 of Kochi SRO without settling the boundary dispute. Unless and until the boundaries of plaint A schedule is not fixed the dispute between the plaintiff and defendant cannot be resolved. The dispute is with respect to the western boundary.

3. The written statement filed by the 1st and 3rd defendants in brief as follows:- The 2nd defendant accepted the contentions of written statement filed by defendant No.1 and 3. The defendant No.1 and 3 contended that they are not necessary party to the suit since they have no property adjoining the plaintiff's property. The plaintiff is raising unnecessary and baseless claim over the adjoining property and

the common boundaries of plaint schedule property have clear demarcation. The unnecessary claim was raised by the plaintiff for harassing the defendant. The 3rd defendant is the absolute owner and in possession of entire 4.86 cents . There is no cause of action for the plaintiff. There is no need to fix the boundaries.

4. On the basis of the pleadings, the following issues were raised for trial:-

- (i). Is the plaintiff entitled to get a decree fixing the eastern boundary of plaint A schedule property?
- (ii). Is the plaintiff entitled to get a decree of permanent prohibitory injunction against the defendants as prayed?
- (iii). Is the suit bad for mis-joinder of unnecessary parties?
- (iii). Reliefs and costs?

5. The evidence of plaintiff consists of oral testimony of PW1 and Exts. A1to A5, C1 and C1(a) documents. The evidence of defendants consists of oral testimony of DW1 and Exts.B1 to B4 documents .

6. Heard the learned counsel for both sides.

7. **Issue No.(i):-** The first issue to be decided regarding the fixation of eastern boundary of the Plaintiff schedule property. The case of the plaintiff is that he obtained Plaintiff A schedule from his father vide a gift deed bearing No.1187/2000 of Kochi SRO. The original of the said document is marked as Ext.A1. As per Ext.A1 Plaintiff's father Antony, S/o.Vacco had settled 20 cents of property in Sy.No.1044 along with a house bearing No. K.P X/377 obtained by Plaintiff's father vide document No.483/1952 of Kochi SRO to the plaintiff. He also assigned 30 cents of paddy field in Sy.No.27/1 of Chellanam village obtained by his father vide document No. 607/1976 of Chellanam village. The eastern boundary of the said 20 cents is shown as the property of his father, northern boundary is shown as property of Mary, western boundary is shown as the property of George and the southern boundary is shown as property of Joseph. This is the disputed property. There is no dispute with regard to 34 cents of nilam assigned to the plaintiff vide Ext.A1 document. Subsequent to the settlement of

54 cents of property in the name of plaintiff vide Ext.A1 document his father assigned 14 cents of property in the same survey number vide a gift deed bearing no. 3410/2000 of Kochi S.R.O to the 1st defendant. The said 14 cents is shown as plaint B schedule. Subsequently the 1st defendant assigned 12 cents to 2nd and 3rd defendants vide document No. 3926/2014. The certified copy of the said document is produced and marked as Ext.A2. The eastern boundary, southern boundary and the northern boundary of the property depicted in Ext.A2 document is a non vehicular pathway left by the 2nd defendant and the western boundary is the property of Naduvilathara Joy Antony (plaintiff) and Kandamassery Sabu Joseph. Ext.A3 is the proceedings of taluk legal service committee in PLP No.137/2014 on 09.08.2014. From this document it can be ascertained that the plaintiff has preferred a petition before the taluk legal service, Kochi against DW1, Shiny. Ext.A4 is the sale deed No.1643/2016 executed by the 2nd and 3rd defendants in the name of Tressa Bilta. As per Ext.A4 0.33 Ares of property has been assigned to Tressa Bilta. Ext.A5 is the sale deed jointly executed by 2nd

and 3rd defendants in the name of Antony Brown. As per Ext.A5 0.85 Ares in Sy.No.1044 was assigned to Antony Brown. The eastern and southern boundary of the said 0.85 Ares is a non vehicular pathway and the northern boundary is the property of Milt and Micheal. The western boundary is the defendants' remaining property and the property of Micheal.

8. The plaintiff has taken out a commission and the commissioner has inspected the property along with taluk surveyor and filed a report and a plan. The said report and plan were marked as Ext.C1 and C1(a). In the sketch the plaint A schedule property is shown as plot B + plot C. The plot marked as A is the property owned by the 1st defendant. After measuring the property the commissioner fixed the common boundary of plaint A and B schedule property as between plot C and C1. While answering query No.2 commissioner reported that plot B having an extent of 17.692 and plot C having an extent of 2.446 together will form the plaint A schedule. By adding the extent of these two plots the total extent will come to 20.138. During cross

examination the plaintiff stated that he has no grievance that the extent of his property is reduced after the survey measurement. In his proof affidavit even though he raised certain objections regarding the observations made by the surveyor he expressed that he has no objection in fixing the boundary of plaint A schedule between the plots C and C1 shown in the survey sketch. In Ext.C1 (a) sketch it shown that 1.235 cents marked as C1 and 6.152 cents marked as C2 will form part of the plaint B schedule. The plot shown as D and F is in the possession of strangers to whom the land was assigned by the defendant and their predecessors.

9. The wife of the 1st defendant was examined as DW1 and Exts.B1 to B4 documents were marked from the side of the defendants. Ext.B1 is the document No.1813/1961. As per this document the father of the plaintiff and 1st defendant purchased 22 cents of land from Eliswa. As per this document 26 cents of property in Sy.No.1044 of Kumbalangi village has been assigned to plaintiffs and 1st defendant's father Joseph. Ext.B2 is a sale deed executed by plaintiff's father

Antony in the name of 1st defendant Thampi. As per this document the plaintiffs and 1st defendant's father assigned 38.983 cents . Ext. B3 is a document whereby one Victoria had assigned her right in the property of Mary and Joseph in the name of 1st defendant Thampi. As per this document 10.92 Ares has been assigned to 1st defendant. As per Ext.B4 document dated 19.12.2019 Judithy has assigned her right in 10.92 Ares in Sy.No.1044 was assigned to 1st defendant Thampi. The parties has not much dispute with regard to these documents. Only defendants filed any objection to the commission report. During the cross examination of DW1 she deposed that she has read and understood the commission report and the sketch filed before this court fixing the boundaries of plaint A and B schedule properties. After examining PW1 and DW1 they did not raise much dispute regarding the Ext.C1 commission report and C1(a) sketch filed by the commissioner. While marking Ext.C1 commission report and C1(a) plan the defendant did not raise any objection. The case of the defendants is that there is clear demarcation between plaint A and B schedule properties and there is no

need to fix eastern boundary of plaint A schedule. But no evidence is adduced before this court to show that there is visible demarcating boundary between plaint A and B schedule. Even at the time of commission the defendants did not even put a work memo to ascertain this fact. Hence it can only be ascertained that boundary on the eastern side of plaint A schedule has to be fixed. The parties have no serious objection in fixing the boundaries as reported by the commissioner and as shown in Ext.C1(a) plan. From the discussions made above, issue No.1 is found in favour of the plaintiff. The eastern boundary has to be fixed between the plots C and C1 in the Ext.C1 (a) sketch.

10. **Issue No.(ii)**:- Upon the finding of issue No.1 it is found that the plaintiff is entitled to get his boundary fixed as per the Ext.C1 and C1(a) report and plan. It is obvious that there exists disputes between the plaintiff and defendant regarding the actual boundary between plaint A and B schedule properties . The chances of arising disputes of future cannot be avoided as such and once the boundary is fixed it is necessary to prevent the defendant from again causing any disturbance

to the possession of the plaintiff and the peaceful enjoyment of the plaint A schedule by the plaintiff. Hence I am satisfied that the defendants are to be restrained from further trespassing into plaint A schedule property and from creating any nuisance to the peaceful enjoyment and possession of plaint A schedule property by the plaintiff. The plaintiff is entitled to get a decree of permanent prohibitory injunction restraining the defendants from trespassing into plaint A schedule property and committing any waste or mischief detrimental to the title, ownership and possession of plaint schedule property. Hence issue No.2 is also answered in favour of the plaintiff.

11. **Issue No.(iii):-** From the analysis of Ext A2 document it can be seen that .81 ares of property in Sy.1044 is still in the possession of Defendant no. 1. Only 4.86 cents of property is assigned together to D2 and D3 out of 5.67 ares obtained by him vide Ext. B2 document. From the analysis of Ext. A2, A4, A5, documents 1.18 cents of property still remains with D2 and D3. Hence they are not unnecessary parties to this suit.

12. Issue no.(iv) In the result, suit is decreed with costs as follows:-

- a) The eastern boundary of plaint A schedule is fixed between plot C and C1 in Ext. C1 commission report and C1(a) plan .
- b) The commission report and plan shall form part of the decree.
- c) The defendants 1 to 3 are hereby restrained by a decree of permanent prohibitory injunction from trespassing into plaint A schedule property and from committing any act of waste within plaint A schedule property or from interfering with the peaceful possession and enjoyment of plaint A schedule property by the plaintiff.
- d) The defendant shall pay the entire costs of the suit to the plaintiff.

(Typed by Confdl.Asst, corrected and pronounced by me in open court on this the 8th day of July 2022.)

Sd/-
Karthika. K.
Additional Munsiff

APPENDIX**Plaintiff's Exhibits:-**

A1	28.02.2000	Original Gift Deed bearing No. 1187/2000 of Kochi SRO
A2	24.09.2014	The certified copy of vide document No. 3926/2014 of SRO Kochi
A3	09.08.2014	Proceeding of Taluk legal service committee in PLP No. 137/2014
A4	27.04.2016	Sale deed No. 1643/16 executed by 2 nd and 3 rd defendants in the name of Tressa Billa
A5	15.05.2017	Certified copy of Sale Deed No. 1534/2017 executed by 2 nd and 3 rd defendants in the name of Antony Brown

Defendant's Exhibits:-

B1	12.09.1961	The Document No. 1813/1961 of Kochi SRO
B2	27.06.2000	Sale Deed No. 3410/2000 of Kochi SRO
B3	22.10.2012	Sale Deed No. 4956/2012 of Kochi SRO
B4	19.11.2012	Sale Deed No. 5228/2012 of Kochi SRO

Court's Exhibits:-

C1	04.06.2020	Commission report filed by Adv. V.N Kamath
C1(a)	--	Sketch

Plaintiff's Witness:-

PW1 04.03.2022 Joseph Joy

Defendant's Witness:-

DW1 24.03.2022 Shiny Jacob

Court's Witness:- Nil

Witness Exhibits Nil

Id/-
Additional Munsiff