

IN THE COURT OF THE MUNSIF AT ALUVA

Present:-Sri. Santhosh.T.K., Munsiff

Tuesday, the 23rd day of August 2022/1st Bhadrapad 1944

O.S.No.138/2021

Plaintiffs:-

1. Anilkumar, aged 48 years, S/o. Sasidharan,
Mankuzhithundil House, Poikkattussery Kara,
Nedumbassery Village, Aluva Taluk.
2. Lekha Anilkumar, aged 46 years, W/o. Anilkumar,
Mankuzhithundil House, Poikkattussery Kara,
Nedumbassery Village, Aluva Taluk.

By Adv. C.S. Sunilkumar Pai & M.R. Biju Varma.

Defendants:-

1. Suresh, aged 51 years, S/o. Krishnakurup,
Kottamadathil House, Poikkattussery Kara,
Nedumbassery Village, Aluva Taluk.
2. Sunilkumar, aged 48 years, S/o. Krishnakurup,
Kottamadathil House, Poikkattussery Kara,
Nedumbassery Village, Aluva Taluk.
3. Shiju, aged 46 years, S/o. Krishnakurup,
Kottamadathil House, Poikkattussery Kara,
Nedumbassery Village, Aluva Taluk.
4. Rajan, aged 54 years, S/o. Achuthakurup,
Kottamadathil House, Poikkattussery Kara,
Nedumbassery Village, Aluva Taluk.
5. Raveendran, aged 58 years, S/o. Achuthakurup,
Kottamadathil House, Poikkattussery Kara,
Nedumbassery Village, Aluva Taluk.
6. Sivan, aged 55 years, S/o. Sekharapilla,
Chencheriparambil House,H.No.6/265, Chengamanad Kara,
Chengamanad Village, Aluva Taluk.

Exparte.

This suit is filed under Order VII Rule 1 and Sec. 26 of C.P.C.

This suit came up for hearing before me on 12.08.2022 and on 23.08.2022 delivered the following:-

JUDGMENT

This is a suit for decree for declaring that the A, B and C

schedule properties has been in the exclusive ownership of the plaintiffs since the fifth defendant Raveendran is missing for the last 63 years and his civil death should be presumed and for a permanent prohibitory injunction restraining the defendants from trespassing into the plaint A, B and C schedule properties and from committing waste therein.

2. The facts of the case in brief are as follows:- The plaint A schedule property has been in the ownership of the first and second plaintiffs. The plaint B schedule property has been in the ownership of the second plaintiff. The plaint C schedule property has been in the ownership of the second plaintiff. Nobody has any right over the plaint A, B and C schedule properties and the plaintiffs have been in the exclusive possession of the plaint schedule properties. The defendants are the predecessors in interest of the plaint schedule property. The sixth defendant is the predecessor in interest of the plaint B schedule property. By virtue of Partition Deed No.433/1992 has been partitioned in favour of the children of Koottumadathil Achutha Kurup who are Krishna Kurup, Thankamma, Ammini Amma and her son Rajan and their brother Raveendran. Raveendran was missing for the last 35 years and his whereabouts are not known to anybody. The brothers, his siblings and neighbours have made earnest efforts to trace out his whereabouts but they failed their attempt.

Krishna Kurup, Thankamma, Ammini Amma and her son Rajan jointly executed a Partition Deed No.4313/1992 including the property of Raveendran. Accordingly, by virtue of the Partition Deed No.4313/92 the A schedule property has allotted to Krishna Kurup, B schedule in favoaur of Thankamma, C schedule allotted to Ammini Amma and Rajan. D schedule property allotted to Raveendran who is the fifth defendant. The B and C schedule properties in the Partition Deed is shown as A, B and C schedule properties in the Partition Deed is shown as A, B and C schedule properties in the plaint. Though Raveendran was not a party to the Partition Deed, his share was allotted separately. Since Raveendran was not heard for since 1957, his civil death should be presumed. The legal heirs of Krishna Kurup in the Partition Deed are the defendants 1 to 3. Thankamma was unmarried and later she died. The Party No.4 is the son of Ammini Amma in the Partition Deed. After the death of Ammini Amma, her property devolved to the fourth defendant and he is the only legal heir of Ammini Amma. Therefore, all the parties to the Partition Deed were made parties in the plaint. The fifth defendant is Raveendran who was missing for the last 35 years. The plaint A, B and C schedule properties has been in the ownership and possession of the plaintiffs.

The plaintiffs are trying to alienate to sell the property but sale cannot be conducted due to the interference of the defendants. Since Raveendran's whereabouts are not known for the last 63 years his civil death should be presumed and it should be declared that A, B and C schedule properties are in the exclusive ownership and possession of the plaintiffs. The defendant should be restrained by a permanent prohibitory injunction from trespassing into the plaint schedule property and from obstructing the sale of the plaint schedule property. The defendants are attempting to trespass into the plaint schedule property and on 03.04.2021 the defendants trespassed into the plaint schedule property and tried to cut and remove the trees in the plaint schedule property. But due to the timely interference of the plaintiff, the defendants backtracked from their attempt. The suit shall be decreed with costs.

3. The defendants were called absent and set exparte. First plaintiff was examined as PW1. Exts.A1 to A7 were marked. Witnesses on the side of the plaintiff was examined as PW2 and PW3.

4. Ext.A1 is the Sale Deed No.3713/06 which shows plaint A schedule property has been in the ownership of the first and second plaintiffs. Ext.A2 is the Sale Deed for the plaint B schedule property

executed in favour of the sixth defendant. Subsequently, by virtue of Ext.A3 the sixth defendant has sold the B schedule property in favour of the second plaintiff. C schedule property has been in the ownership of the second plaintiff which he purchased by virtue of Ext.A4 document. Accordingly, the second plaintiff has been enjoying the plaintiff C schedule property. The plaintiff contended that nobody other than the plaintiffs have right over the plaintiff A, B and C schedule properties. The defendants are the predecessor in interest of the B schedule property. The predecessors who are Krishna Kurup, Thankamma, Ammini Amma and her son Rajan and Raveendran were executed a partition deed No.4313/1992 which was marked as Ext.A5. Accordingly, A schedule was allotted to Krishna Kurup, B schedule was allotted to Thankamma, C schedule property to Ammini Amma and Rajan and D schedule property was allotted in favour of Raveendran who has been missing for the last several years. The B and C schedule properties in Ext.A5 are shown as A, B and C schedule property. Even though Raveendran was not made a party to Ext.A5 but a share of property was allotted in favour of Raveendran. The plaintiff contended that since Raveendran was not been heard from 1957, his civil death should be presumed and the plaintiff sought

for a decree declaring that the plaint A, B and C schedule property has been in the exclusive ownership and possession of the plaintiff and should be presumed the civil death of fifth defendant. Ext.A6 is the receipt of the tax in favour of the first plaintiff in the year 2021-2022. Ext.A7 is the receipt of tax dated 11.07.22 in favour of second plaintiff. In order to prove that Raveendran has been missing for the last several years, PW2 and PW3 were examined. PW2 is the neighbouring person of the plaint schedule property and he has acquaintance with plaintiff and defendants. According to PW2, he heard about that Raveendran was missing for the last several years back. According to PW2, Raveendran has been missing 63 years back. PW3 is also the neighbour of the plaint schedule property. He has also deposed that he has acquaintance with the plaintiff and defendants and they are neighbours of the PW3. According to PW3, the whereabouts of the Raveendran was not known for the last several years. Apart from the evidence of PW2 and PW3 there is no evidence adduced to show that the complaint has been filed with respect to the missing of Raveendran. Normally if a person was missing a complaint would be filed by the relatives before the police station concerned or before any other competent authorities. No such complaint produced

by the plaintiffs. The evidence PW2 and PW3 transpired that they have only hear say evidence that Raveendran has been missing for the last 63 years back. The age of PW2 is 44 years and the age of PW3 is 47 years. According to them, Raveendran was left from the home 63 years back. If that be so, the evidence adduced on the part of the PW2 and PW3 are only hear say evidence. It is the settled law that hear say evidence is not admissible. In such circumstances, the evidence of PW2 and PW3 cannot be taken into account. On evaluating the entire evidence in this case, the plaintiff failed to prove that the Raveendran has been missing for the last 63 years as alleged in the plaint. When the plaintiff failed to prove it, a declaratory decree in favour of the plaintiff cannot be allowed as alleged in the plaint. Consequently, the plaintiffs are also not entitled for a permanent prohibitory injunction as prayed for.

In the result, the suit is dismissed with costs.

Dictated to Confdl. Asst.,transcribed and typed by him, corrected and pronounced by me in the open court on this the 23rd day of August, 2022.

**Munsiff,
Santhosh.T.K.**

Appendix:

Plaintiff's Exhibits:

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| A1. | 05.06.2006 | Certified copy of the Sale Deed No.3713/06 of SRO, Chengamanad. |
| A2. | 05.01.2007 | Certified copy of the Sale Deed No.156/07 of SRO, Chengamanad. |
| A3. | 04.02.2010 | Certified copy of the Sale Deed No.378/10 of SRO, Chengamanad. |
| A4. | 20.05.2009 | Certified copy of the Sale Deed No.1275/09 of SRO, Chengamanad. |
| A5. | 09.11.1992 | Certified copy of the Partition deed No.4313/1992 of SRO, Chengamanad. |
| A6. | 11.07.2022 | Tax Receipt. |
| A7. | 11.07.2022 | Tax Receipt. |

Defendant's & Court Exhibits:- Nil

Plaintiff's Witness:-

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| PW1 | 21.07.2022 | Anil Kumar |
| PW2 | 21.07.2022 | Rajesh C.P. |
| PW3 | 21.07.2022 | Saji K.A. |

Defendant's & Court Witness:- Nil

Munsiff