

IN THE COURT OF THE MUNSIF, PERUMBAVOOR

Present:- Sri. M.I. Johnson, B.A., LL.B., Munsiff.

Friday, the 1st day of August, 2014/10th Sravana, 1936.

O.S.No.63/2013

Plaintiff:-

Varghese, Pensioner, aged 70 years, S/o Isahack, Kollaramali Veettil, Vengola Kara, Vengola Village, Kunnathunadu Taluk.

By Adv: N.C. Mohanan, S. Anil Kumar and M.R. Santhosh Kumar.

Defendant:-

George, aged 57 years, S/o Isahack, Kollaramali Veettil, Vengola Kara, Vengola Village, Kunnathunadu Taluk.

By Adv: K.R. Rajagopalan Nair.

This suit having been finally heard before me on 7.7.2014 and the Court on 1.8.2014 delivered the following:-

J U D G M E N T

Suit is for permanent prohibitory injunction.

2. Plaintiff averments in brief are stated as follows:- Defendant is elder brother of plaintiff. Plaintiff's scheduled property is belonged to the plaintiff. Property situated on the immediate Western side of plaintiff's scheduled property is belonged to the defendant. Plaintiff's property is separated from adjacent properties by clear demarcated boundaries. Plaintiff was employed abroad. Plaintiff has financially assisted the defendant and the defendant was taking usufructs from the plaintiff's scheduled property. Plaintiff returned from abroad in the year 1994 and started to permanently reside in the house situated in plaintiff's scheduled property. Defendant started to quarrel with plaintiff after return of plaintiff from abroad, since the defendant cannot take usufructs from the plaintiff's scheduled property after return of plaintiff. Plaintiff obtained plaintiff's scheduled property from his father in the year 1982 and thereafter he constructed a house in the same in the year 1984. At the time of construction of the house, he constructed a gate on the southern side of his property so as to enter into his property from the road on southern side. The gate was fixed on

the northern boundary on its Western end. The family house is situated in the property of defendant which is situated on the immediate Western side of plaintiff's property. Parents of plaintiff and defendant were residing along with the defendant in the family house. Since the defendant is brother of plaintiff, plaintiff allowed the defendant to enter into his property through aforesaid gate. There are other entrances to the property of defendant from the road on southern and western sides of his property. While so, on 20/04/2012, defendant trespassed into the courtyard of plaintiff and threatened to kill the plaintiff. Plaintiff made a complaint before DySP Perumbavoor against the same. Thereafter, with a view to harass the plaintiff, defendant filed OS 208/2012 before this court with a prayer for fixation of Eastern boundary of his property and for permanent prohibitory injunction. After filing aforesaid suit and obtaining a temporary injunction, defendant is making preparations to sell-out his property in plots after showing the way through aforesaid gate. Moreover, defendant obstructed a mini lorry which was coming to the house of plaintiff on 05/02/2012 and thereafter uttered abusive words

towards the plaintiff as well as threatened to sell-out his property after showing the way through plaintiff schedule property. Defendant has no right to sell-out his property after showing the way through plaintiff schedule property. Hence the defendant is to be restrained from doing so. For aforesaid reliefs, plaintiff filed the suit.

3. Defendant filed written statement with contentions briefly stated as follows:- Plaintiff obtained 2.60 acres of land from his father through deed number 218/1982 and as per resurvey, there is 2.66 acres of land. Defendant obtained 1.60 acres of land from his father through deed number 219/1982 and at the time of measurement for the purpose of mutation, it was found that there is only 1 acre and 57.5 cents of land. Remaining 2.5 cents of land is in the possession of plaintiff. Plaintiff is not entitled to possess and enjoy that property. For recovery of possession of that property and for fixation of Eastern boundary of defendant's property, defendant filed OS 208/2012 before this court which is pending. It is not correct to say that property of plaintiff is lying within well demarcated

boundaries. Property of plaintiff is not separated from the property of defendant. It is not correct to say that plaintiff financially assisted the defendant when he was employed at abroad. Defendant never took usufructs from the property of plaintiff. Property of plaintiff was looked after by their father Isahac. House of plaintiff was constructed by defendant and his father in the year 1984. Construction of the house was completed in a period of 4 years. At that time, plaintiff was at abroad. The gate on the southern side was erected by defendant and his father. Aforesaid gate is situated in the property of defendant. The way to house of defendant was constructed from the old way to the family house. Property of plaintiff is situated on the side of the old way to family house. It is not correct to say that, on 20/04/2012, plaintiff trespassed into the courtyard of plaintiff and threatened to kill him. It is not correct to say that, defendant is making preparations to sell-out his property in plots after showing the way through plaintiff's property. It is not correct to say that defendant threatened to sell-out his property after showing the way through plaintiff's property. Defendant never tried to use plaintiff's property as way to his

property. On the other hand, plaintiff is making preparations to grab the property of defendant and as part of the same, as an experiment, this suit was filed. Plaintiff is not entitled to get any of the relief sought for in the suit. The suit is liable to be dismissed with cost of the defendant.

4. Upon the pleadings, following issues were raised for consideration:-

1. Whether the plaintiff is entitled to a decree for permanent prohibitory injunction as prayed for?

2. Order as to cost?

5. **Issue no. 1**:- Plaintiff was examined as P W1. He filed proof affidavit in terms of the plaint. Case of the plaintiff is that, plaint schedule property is belonged to him and the defendant's properties are situated on the immediate Western side of his property. It is alleged by the plaintiff that, plaint schedule property is lying within well demarcated boundaries and there is a gate on the South Western corner of plaint schedule property and a way as its continuance, which is an entrance

from road on southern side to plaint schedule property. According to the plaintiff, aforesaid gate and way are part of plaint schedule property and defendant has no right at all over the same. Further allegation of the plaintiff is that, defendant is making preparations to sell-out his property in plots after showing the gate and way, alleged to be situated in plaintiff's property, as way to the plots to be sell-out by the defendant. Hence for restraining the defendant from selling out his property after showing the way, alleged to be passing through plaintiffs's property, plaintiff filed the suit. Plaintiff has further prayed for permanent prohibitory injunction restraining the defendant from trespassing into plaint schedule property and from committing any waste therein.

6. On the other hand, defendant has contended that plaintiff's property is not separated from his property which is situated on the Western side of plaintiff's property. Defendant has further contended that, aforesaid gate on the southern boundary and the way proceeding towards North from aforesaid gate are part of his property and the Eastern boundary of his

property is on the Eastern side of aforesaid gate and the way.

7. From the rival contentions, it can be seen that, there is a way in between the properties of plaintiff and defendant and there is a gate at its starting point. It can further be seen that, on the southern side of that gate, there is a road and the disputed way is starting from aforesaid road and proceeding towards North. It is very much clear from the pleadings that, plaintiff and defendant are claiming title over aforesaid gate and the way portion. In other words, there is a dispute with respect to the boundary separating plaintiffs property from that of defendant and hence there is a dispute with respect to the title over the portion through which the disputed way is passing and the gate at its southern end. Without identifying the boundary separating both these properties, it is not possible to find out who is the owner of the property at which the disputed gate is erected and the disputed way is passing. In other words, it is only to be held that, identity of plaintiff schedule property is in dispute. Significantly, it is an admitted fact that, defendant has filed OS 208/2012 before this court for fixation of

boundary separating both these properties and the same is pending. Plaintiff filed this suit after knowing the pendency of aforesaid suit.

8. Plaintiff has produced certified copy of sale deed number 218/1982 of Perumbavoor SRO to prove his title over plaintiff schedule property. The same was marked as exhibit A1. Exhibit A2 is basic tax receipt issued in the name of plaintiff with respect to the property covered by exhibit A1. Exhibit A3 is certified copy of sale deed number 3338/2011 of Perumbavoor SRO through which, defendant sold out 4.05 Ares of land from his property to one Srinivasan. Exhibit A4 is copy of a complaint alleged to be filed by the plaintiff before DySP Perumbavoor against the defendant alleging that defendant threatened to kill him.

9. It is true that as per exhibit A1, plaintiff is owner of 2.60 acres of land and he obtained the same from his father. From exhibit A2, it can be seen that, plaintiff is paying land tax for 1 hectare and 7.13 Ares of land. Significantly, as already stated,

there is dispute with respect to the boundary separating plaintiff schedule property from that of defendant. In these circumstances, plaintiff is duty bound to prove before the court that, the disputed gate and the way are part of his property covered by exhibit A1, so as to get a permanent prohibitory injunction as prayed for by him in the suit. So as to prove the same, plaintiff ought to have been applied for appointing a survey commission, so as to measure out, identify and locate the plaintiff schedule property. Significantly plaintiff did not take any steps for appointing a survey commission and thereby to identify the plaintiff schedule property. The same is fatal to the case of plaintiff. Exhibit A1 and A2 are not sufficient to prove that the property at which the disputed gate is erected and the way is passing are part of the property belonged to the plaintiff.

10. At the time of arguments, counsel for plaintiff relied on exhibit C1 commission report and C1(a) rough sketch and argued that through exhibit C1 and C1(a), plaintiff schedule property can be easily identified. Exhibit C1 is the commission report filed by the Commissioner after conducting a local

inspection. Exhibit C1 is only a rough sketch without any measurements. It is true that in exhibit C1 (a) rough sketch, Commissioner has shown lay of properties of plaintiff and defendant. But the same is not sufficient to identify the actual boundary separating both these properties. A measured plan is necessary to identify the said boundary. In these circumstances, aforesaid argument of counsel for plaintiff that, plaintiff schedule property can be identified through exhibit C1 (a) is not sustainable.

11. In considering aforesaid discussions, it is held that, plaintiff failed to prove his title and possession over the property at which the gate is situated and the disputed way is passing. In these circumstances, plaintiff is not entitled to get a decree as prayed for. Hence this issue is found against the plaintiff.

12. **Issue No. 2:-** In considering the facts and circumstances of the case, there is no cost. This issue is found accordingly.

In the result, the suit is dismissed. Considering the facts and circumstances of the case, there is no cost.

Typed, corrected and pronounced by me in the open court on this the 1st day of August, 2014.

Sd/-
M.I.JOHNSON,
MUNSIFF.

APPENDIX

Plaintiffs' Exhibits:-

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|----|-----------|--|
| A1 | 18.1.1982 | Certified copy of Sale deed No. 218/82 of SRO, Perumbavoor. |
| A2 | 24.7.2012 | Tax receipt No. 3234875 issued from Village Office, Vengola. |
| A3 | 30.6.2011 | Certified copy of Sale deed No. 3338/1/11 of SRO, Perumbavoor. |
| A4 | 20.4.2012 | Copy of complaint filed by the plaintiff before DySP, Perumbavoor. |

Defendant Exhibit:

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|----|-----------|---|
| B1 | 15.5.2014 | Tax receipt No. 4215858 issued from Village Office, Vengola. |
| B2 | 22.3.2014 | Copy of FIR and charge sheet in Cr. No. 1275/14 of Perumbavoor Police Station. |
| B3 | 22.3.2014 | Copy of Wound Certificate issued from T.H.Q. Hospital, Perumbavoor in the name of George. |

Court Exhibits:

C1& 10.7.2013 Commission report and rough sketch submitted
C1(a) by Adv. Basil Kuriakose.

Plaintiff Witness:-

PW1 3.7.2014 Varghese

Defendants' Witness:-

DW1 5.7.2014 George K.I.

Id/-
MUNSIFF.

// True Copy //

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Comp.by:

Copy of Judgment in O.S. No.63/2013	
Dated:	1.8.2014