

IN THE COURT OF THE MUNSIF, PERUMBAVOOR

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

Tuesday, the 8th day of March, 2016/ 18th Phalguna 1938 .

O.S.Nos. 208/2012 and 63/2013

O.S.No. 208/2012

Plaintiff:-

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

By Adv. K.R. Rajagopalan Nair, Sindhu S. Bhattathiri & C.R. Gayathri

Defendant:-

Issac Varghese, aged 70 years, S/o Isahack, Kollaramali, Vengola Kara, Vengola Village

By Adv. T.V. Eldho

O.S.No. 63/2013

Plaintiff

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

By Adv: T.V. Eldho

Defendant

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

By Adv. K.R. Rajagopal

These suits having been finally heard before me on 8.3.2016 and the Court on the same day delivered the following:-

COMMON JUDGEMENT

OS 208/2012

Suit is for fixation of boundary and for recovery of possession.

2. Plaintiff averments in brief are stated as follows:- Plaintiff and defendant are brothers. Plaintiff A schedule property is belonged to plaintiff and he obtained that property through document No. 219/82 as item No. 1 in the same, from his father. Plaintiff B schedule property is part of plaintiff A schedule property and is now in the illegal possession of defendant. Plaintiff several times requested the defendant to give possession of plaintiff B schedule property to plaintiff, but in vain. Defendant is making obstructions in fixing Eastern boundary of plaintiff A schedule property. Hence, Eastern boundary of plaintiff schedule property is to be fixed by the court and plaintiff is to be allowed to recover possession of plaintiff B schedule property from defendant. For the same, plaintiff filed the suit.

3. Defendant filed written statement and additional written statement with contentions briefly stated as follows:- It is not correct to

say that, plaint B schedule property is part of plaint A schedule property and defendant is in illegal possession of the same. Plaint B schedule property is part of the property obtained by defendant, from his father, through document No. 218/1982 of Perumbavoor SRO. Aforesaid property is lying in resurvey 308/4 of Vengola village. Plaintiff has no right at all over plaint B schedule property. Resurvey number and boundaries of plaint A and B schedule properties are incorrect. Defendant was employed at abroad from 1975 to 1994. At that time, defendant used to financially assist the plaintiff. Plaintiff was collecting usufructs from the property of defendant at that time. Defendant returned from abroad, constructed a house in his property and started to permanently reside in the same from 1994 onwards. Thereafter, plaintiff started to raise several untenable contentions. Defendant constructed a house in the property obtained by him from his father, in the year 1984 and at that time, he constructed an opening and a Gate towards that house from the way on the southern side of his property. Defendant allowed the plaintiff to use aforesaid way to his property also, since, plaintiff is his brother. The way and gate is situated in the alleged plaint B schedule property belonged to defendant and plaintiff has no right at all over the same. It is not correct to say that, plaintiff several times requested the defendant to give back possession of plaint B schedule property. It is not correct to say that, defendant is creating obstructions in fixing Eastern boundary of

property of plaintiff. After resurvey, plaintiff is in possession of more property than the property covered by his document. If the plaintiff has any objection with respect to resurvey, he must have been filed a complaint before authorities concerned. Plaintiff filed the suit only to harass the defendant. 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 defendant.

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

1. Whether the plaintiff is entitled to get a decree for fixation of Eastern boundary of plaintiff schedule properties and if so, through which line?
2. Whether the plaintiff is entitled to get a decree for recovery of possession of plaintiff B schedule property as prayed for?
3. Order as to costs?

OS 63/2013

5. Suit is for permanent prohibitory injunction.

6. Plaintiff averments in brief are stated as follows:- Defendant is elder brother of plaintiff. Plaintiff schedule property is belonged to the plaintiff. Property situated on the immediate Western side of plaintiff schedule property is belonged to defendant. Property of plaintiff is

separated from adjacent properties, by clear demarcated boundaries. Plaintiff was employed at abroad. Plaintiff has financially assisted the defendant and the defendant was taking usufructs from plaintiff schedule property. Plaintiff returned from abroad in the year 1994 and started to permanently reside in the house situated in plaintiff schedule property. Defendant started to quarrel with plaintiff after return of plaintiff from abroad, since the defendant cannot take usufructs from plaintiff schedule property after return of plaintiff. Plaintiff obtained plaintiff schedule 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 southern 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 schedule property. Parents of plaintiff and defendant were residing along with 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.

7. 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.

8. 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?

9. Earlier, OS 63/2013 was dismissed by this court on 01/08/2014. Against that judgement, plaintiff in that suit filed appeal before Honourable Sub Court of Perumbavoor as AS 73/2014. The appeal was allowed by way of remand with a direction to consider I.A. 1435/2014 filed in OS 63/2013 for joint trial of that suit with OS 208/2012. Later on, I.A. 1435/2014 was allowed and accordingly, joint trial of OS 63/2013 with OS 208/2012 was ordered. It was ordered that, OS 208/2012 shall be the leading suit.

10. After allowing joint trial of both the suits, both sides were given opportunity to take pre-trial steps and thereafter, the suits were included in the special list and was posted to 08/03/2016 (today), for trial.

11. Today, plaintiff in OS 63/2013 who is defendant in OS 208/2012 was present and was ready to adduce evidence. But, defendant in OS 63/2013 who is plaintiff in OS 208/2012 remained absent.

12. Plaintiff in OS 63/2013 was examined as DW1. He filed proof affidavit and marked exhibits B1 to B6. Commission report and

rough sketch in OS 63/2013 were marked as exhibits C1 and C1 (a). Commission report and plan in OS 208/2013 were marked as exhibits C2 and C2 (a).

13. I heard the counsel for plaintiff in OS 63/2013.

14. As already stated, OS 63/2013 was earlier dismissed by this court. That suit was dismissed by this court only on the ground that, plaintiff failed to prove identity of property of plaintiff in that suit, since, there was dispute with respect to identity of property of plaintiff in that suit. It can be seen that, OS 208/2013 was filed for fixation of boundary separating properties of plaintiff and defendant in that suit who are defendant and plaintiff respectively in OS 63/2013. In that suit, the Commissioner and surveyor deputed from this Court, measured the properties and filed exhibit C2 commission report and C2 (a) plan. From exhibit C2(a) plan, property of plaintiff in OS 63/2013 can be easily identified. Plaintiff in OS 63/2013 has proved his case by affidavit and documents. In these circumstances, plaintiff in that suit is entitled to get a decree for permanent prohibitory injunction as prayed for in that suit.

15. Since, plaintiff in OS 208/2012 remained absent, OS 208/2012 is only to be dismissed for default.

In the result, OS 208/2012 is dismissed for default and OS 63/2013 is decreed. Defendant in OS 63/2013 is hereby restrained by a permanent prohibitory injunction from alienating any portion of his

property after giving right of way through the way which is continuation of the gate implemented by plaintiff on the south-Western corner of his property, as well as from trespassing into property of plaintiff therein where property of plaintiff in OS 63/2013 is the property situated on Eastern side of Eastern boundary of resurvey 308/10, shown in black colour in exhibit C2 (a) plan. Considering the facts and circumstances of the case, there is no cost in both the suits. Exhibit C2 (a) plan shall form part of the decree.

Dictated to Dragon software, corrected and pronounced by me in the open court on this the 8th day of March 2016.

JOHNSON M I
MUNSIFF.

APPENDIX

Plaintiffs Exhibits:- : Nil

Defendant Exhibit :

- B1 18.1.1982 Certified copy of Sale deed No. 218/1982 of SRO, Perumbavoor
- B2 24.7.2012 Tax Receipt NO. 3234875 issued by Village Office, Vengola
- B3 30.6.2011 Certiifed copy of Sale deed NO. 3338/1/11 of SRO, Perumbavoor.
- B4 20.4.2012 Copy of the complaint given to the DYSP, Perumbavoor by the plaintiff.
- B5 Certified copy of Resurvey plan issued from Taluk Office, Kunnathunadu

B6 Certified copy of old survey plan issued from Survey and Land Records Office, Thiruvananthapuram.

Court Exhibit :

C1, 11.7.2013 Commission report and rough sketch filed by Adv.
C1(a) Basil Kuriakose

C2& 21.5.2015 Commission report and survey plan filed by Adv.
C2(a) Manoj Kumar P.T.

Plaintiff Witness:- Nil

Defendant Witness :

DW1 Issac Varghese

Id/-
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// True Copy //

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UU
comp by:

Copy of common Judgment in O.S.Nos.208/2012 & 63/2013	
Dated:	8.3.2016