

IN THE COURT OF THE MUNSIFF, PERUMBAVOOR

Present:- Smt. Alshari A., Civil Judge (Junior Division)
Friday, the 6th day of December, 2024/ 15th Agrahayana 1946

I. A No.03/2021

in

OS.227/2018

Petitioners/Plaintiffs:-

1. Aly & Aliyamma, W/o. Mathai, Kochupurakkal, Valayanchirangara P O, Pulluvazhy Kara, Rayamangalam Village, Kunnathunadu Taluk.
2. Eldho P George, S/o. George, Pallathu House, Kunnakurudy Kara, Airapuram Village, Kunnathunadu Taluk.
3. Eldho Varghese, Aged 38 years, S/o. Varghese, Akkaparambil House, Allapra P O, Vengola Kara, Vengola Village, Kunnathunadu Taluk.
4. Mini Varghese, W/o. Eldho, Pambrakkaran House, Vengoor, Kara, Vengoor Village, Kunnathunadu Taluk.
5. Sani Varghese, W/o. Aji, Thazhathe House, Iringole Kara, Perumbavoor Village, Kunnathunadu Taluk.
6. George, S/o. Kuriakose, Pallathu House, Kunnakurudy Kara, Airapuram Village, Kunnathunadu Taluk.

By Advs. Sonnet Paul & Ciju I S

Respondent/Defendant:-

Alias, S/o. Kuriakose, Pachamparambil House, Valayanchirangara P O, Vengola Kara, Vengola Village, Kunnathunadu Taluk.

By Adv. Joseph Sebastian

This petition having been finally heard before me on 26/07/2024 and the court on the same day passed the following:-

ORDER

1. Heard both sides.
2. According to the petitioner, the suit is one filed for declaration of easement right and perpetual injunction and to set out the way covered by the document bearing No. 100/1955 of SRO, Perumbavoor. Plaint schedule properties belonged to the plaintiffs by virtue of final decree in I.A 567/2011 and as per the judgment and decree in O.S 93/2009. The property was taken in possession as per the proceedings in E.P 103/2013. There is a way in existence through the western side of the item No. 1, 2 and 3 of the plaint schedule property which is described as plaint B schedule in the plaint. The property originally belonged to the mother of the plaintiffs namely Annam, by virtue of document bearing No. 100/1955. The way which is described in the said document is shown as plaint B schedule. Annam and her predecessors and subsequently the plaintiffs are also using the way. While passing final decree, a way was not allotted to since there was already a way in existence. There is no other way of access other than plaint B schedule. The properties surrounding the way belong to the defendant and they concealed the way by using waste, stones etc., and started doing pineapple cultivation on that portion by obstructing the way. It is necessary to identify the plaint B schedule way, for which an Advocate commissioner is to be appointed along with the surveyor. Hence, the petition.
3. The respondent had filed objection by stating that, there is no way in existence as described in plaint B schedule. The suit is intended to create a new way which is not in existence. Seeking for the same relief, I.A 567/2011 was filed in earlier suit bearing No. O.S 93/2009. The commissioner had also filed report in the same. I.A 676/2012 was filed to remit back the

commission report which was dismissed. There is no way in existence and the intention is only to create a new way. There is no reference to any way in the document bearing No. 100/1955. This petition is only intended to mislead the court. There was no way, even when the said Annam had purchased the property about 65 years back. A well having an age of about 60 years is situating on the northern side of the plaint A schedule. As the plaintiff failed to form a new way at the time of final decree, the suit is filed. There is no way in existence on the northern side of plaint schedule property. The plaint B schedule is not in existence and the plaintiffs have no right over the same. Hence, the petition is to be dismissed with the costs of this respondent.

4. On going through the document bearing No. 100/1955, there is a reference to an edavazhy, that is lying on the northern side of the property having an extent of 35 cents covered by the document. The final decree in O.S 93/2009 was produced, wherein there is no reference to any way on any of the sides of the property allotted. The suit is one filed seeking for declaration of easement right through plaint B schedule and to set out the way covered by the document bearing No. 100/1955. On the perusal of records, it can be seen that, the plaintiffs had not taken any commission in this suit, so as to see whether the way is in existence or not. The existence of way is denied by the defendant. At the same time, the document bearing No. 100/1955 refers to an edavazhy on the northern side of the property covered by the document. When the suit itself is to set out a way as per the document and when the existence of the way is disputed, then it is absolutely necessary to identify the properties as per the document bearing No. 100/1955 and the way referred to in the document and to see whether the way in existence or

not. An Advocate commissioner is hereby appointed along with the surveyor to assist the Advocate commissioner. Adv. Safarunnisa M.A is hereby appointed to note the factors required to be noted by the petitioners and the respondent. Surveyor Sri. Reji. I.M is hereby appointed to assist the Advocate commissioner. Petitioners are directed to deposit Rs. 4,500/- towards the remuneration of the commissioner and Rs. 2,500/- towards the remuneration of the surveyor. Issue intimation to the Surveyor. For commission report.

Dictated to the confdl.asstt., transcribed and typed by her, corrected and pronounced by me in open court on this the 06th day of December, 2024.

Sd/-
ALSHARI A.
Civil Judge (Junior Division)

Appendix:- Nil

Id/-
Civil Judge (Junior Division)
(By Order)

// True Copy //

Sd/-
Junior Superintendent

Typed by: jav
Compd by : Siji

Copy of Order
in
I.A 03/2021 in O.S 227/2018
Dated : 6/12/2024