

IN THE COURT OF THE MUNSIF, PERUMBAVOOR

Present:- Smt. Alshari A., Civil Judge (Junior Division)

Friday, the 13th day of September, 2024 / 22nd Bhadra, 1946.

I.A.Nos. 3/2024 & 9/2024

in

O.S. No. 187/2024

Petitioner/Plaintiff:-

K.P. Abraham, aged 82 years, S/o. Paily, Kuruvicharangara House, Kaithakkattukara, Pattimattom P.O., Ernakulam, Pin : 683562.

By Advs. B.N. Shiv Shanker, Tinu T. Joseph,
Mekha Mukundaswar, Sanoj M.A., Varsha V. Kureeppan

Respondents/Defendants:-

1. Muraleedharan Nair, aged 49 years, S/o. Kochu Krishnan, residing in Kunnari House, Neerotti Purayidathil, Elamkulath, Kaithakadu Kara, Pattimattom Village, Kunnathunadu Taluk, Pattimattom P.O., Ernakulam, Pin : 683562
2. Paul Varghese, aged 66 years, S/o. Varghese, residing at Kuruvichirangara House, Kaithakkattukara, Pattimattom P.O., Ernakulam, Pin : 683562

R1 - By Adv. M.K. Jayapalan.

R2 - By Advs. Amrin Fathima & Roshan C. Asharaf.

These petitions having been finally heard before me on 7.9.2024 and the court on 13.9.2024 delivered the following:-

COMMON ORDER

1. Petition averments in brief:- The suit is one filed seeking the relief of declaration of title over plaint B schedule property, on the strength of

ownership and perpetual injunction, against the respondents trespassing into the plaint schedule properties. Petitioner is in possession of plaint B schedule since 1970 and he is entitled to get an injunction against the respondents being trespassers. The petitioner is in possession of plaint A schedule property having an extent of 65 cents, comprised in old survey No. 156/1, 157/2/1, 152/2/2, with resurvey Nos. 102/8 and 102/9, as per the gift deed bearing No. 2531/1970 of SRO Puthencruz. Petitioner is also in possession of plaint B schedule property, with an extent of 35 cents, comprised in old survey No. 156/1A and 156/1B, owned by the 1st respondent/defendant, as per the partition deed bearing No. 4675/1997 of SRO. The said 35 cents is lying in contiguous to plaint A schedule property, as a single compact plot. The entire property is lying, within a single physical boundary kayyala, having a height of about 4 feet. The petitioner is using the plaint B schedule, along with plaint A schedule, peaceably, openly, uninterruptedly and continuously, as of right, for the past 54 years, in hostility to the right of 1st respondent and his predecessor.

2. Petitioner had planted rubber trees, coconut trees, mahogany and few teak wood trees within the plaint A and B schedule properties. The property of the respondents lies at a lower terrain than the plaint A and B schedule properties. Removal of earth by the 1st respondent from the land in his ownership and possession, beyond the eastern boundary of plaint B schedule had resulted the lands of petitioner and the 1st respondent to situate at different levels, at a difference of about 12 feet. The construction of stone boundaries around three sides of plaint B schedule properties and the planting of various trees, was well within the knowledge of the 1st respondent and his predecessor, who reside few meters beyond the canal, that situate on the eastern boundary of plaint B schedule property and they are having knowledge of the hostile title and the claims of the petitioner. The property of the 1st respondent which stands in his actual possession situates beyond the eastern

boundary of plaint B schedule as described in the schedule herein. The removal of earth abutting the eastern boundary of the plaint B schedule resulted in deterioration of stone boundaries of some portion on the eastern boundary of plaint B schedule property. Even then, majority of the portion is still available.

3. The plaint B schedule property is totally inaccessible by the 1st respondent. The fencing now put up, by the respondent is lying without demarcating boundaries and it is not in the actual boundary line, but through an imaginary boundary. The petitioner would be put an irreparable loss and injury, if his right and title is not protected and declared, by passing interim orders. The balance of convenience is strongly in favour of the petitioner. Urgent orders are necessary so as to prevent the respondent from altering the lie, status and nature of plaint A and B schedule properties. Delay in passing the interim order of status of the property, would gravely prejudice the petitioner. Preserving status is essential, till the disposal of the suit. A petition seeking for mandatory injunction for the removal of fence is filed separately. Hence, it is necessary to pass an order of injunction restraining the respondents or their agents from entering into plaint A and B schedule properties, committing waste thereon, encumbering or alienating any portion of plaint A and B schedule properties or taking usufructs, doing any activity, so as to alter the lie, status and nature of the plaint A and B schedule properties including cutting and removal of trees and earth, demolishing the stone boundaries on east, north and south of plaint B schedule properties or exercising any kinds of acts of possession as prayed. Hence, the petition.
4. The 1st respondent had filed counter statement by denying the petition averments. The petition is not maintainable, either in law or on facts. Petition is filed without any bonafides and as an experimental one. The description, boundaries and survey numbers of plaint schedule

properties shown are incorrect. Petitioner had never obtained any ownership over the plaint B schedule property. The petitioner did not produce any document to show the ownership of the plaintiff/petitioner over plaint B schedule. The plaint B schedule property belonged to the 1st respondent and his brother Udayakumar as C schedule, to the partition deed bearing No. 876/1992 of SRO, Puthencruz. The property was subsequently vested with the 1st respondent, absolutely by virtue of document bearing No. 4675/1997. The property with an extent of 26.15 Ares comprised in survey No. 102/10 absolutely stands in the ownership and possession of the 1st respondent. Periyar Valley canal is the eastern and southern boundary of plaint B schedule property. The northern boundary is demarcated, with the kattukal kayyala and western side is demarcated with iron fencing. The property is lying demarcated with boundaries and it is mainly cultivated with rubber, coconut and other trees. The respondent had preferred application before the Mining and Geology Department, for excavation of soil and as per the direction of the authorities the soil was excavated. The remaining property was lying at a higher terrain, on excavation of soil. The respondent is taking income derived from the plaint B schedule. When the petitioner tried to take the possession of the property forcefully, this respondent had filed the suit bearing No. O.S 46/2020 and an injunction order was also passed against the respondent, that is the petitioner herein. While so, when the respondent was in need of money, he assigned the property to the 2nd respondent herein and thereby discontinued the case.

5. Petitioner is not having any possession or title over the plaint schedule property and it is false that the petitioner had perfected the title over the plaint B schedule, by adverse possession. The property which is lying on the western side of the plaint B schedule property also does not belong to the petitioner. The petitioner had obtained property, with an extent of 14.16 Ares, in old survey No. 156/1 and the property with an extent of 2.2 Ares comprised in old survey No. 157/2/1, comprised in

resurvey No. 102/8 and 102/9, by virtue of document bearing No. 3531/1970, as stated is false. The plaint schedule property absolutely belongs to this 1st respondent and he is remitting tax and also taking income derived from the same. Petitioner is not having any right over the plaint B schedule property. The petitioner was in possession of the property, as stated is false. The plaint A and B schedule properties lying as a compact plot as stated is false. The petitioner was in possession of the property, even before 1997 as stated is false. Plaint B schedule and the property which is lying on the western side of the same, is lying demarcated with iron fencing. Some of the portion of the fencing was deteriorated and it was maintained, after the alienation of the property, in favour of the 2nd respondent. The trees which were standing in the plaint B schedule property was planted by the respondent. The respondent was having knowledge regarding the right claimed in hostility to respondent's title, by the petitioner, as stated is absolutely false. Both plaint A and B schedule properties are having cultivation of same nature, as stated is false. The respondent had removed earth from the portion of plaint B schedule property and the remaining plaint B schedule property is also belonged to the respondent. There is no purpose for this respondent to trespass into his own property, instead the petitioner is trying to trespass into the plaint schedule properties.

6. Pertaining to plaint B schedule property, resurvey came into force, years back. Plaint A and B schedule properties comprised in different and distinct survey numbers and the property stands in the name of the respective owners as per resurvey. The respondent was remitting tax earlier as per resurvey and even now, he is continuing to pay tax pertaining to plaint B schedule property. Excavation of soil, from a portion of the property would not create or vest any right in favour of the petitioner, pertaining to the remaining properties. The respondent is entitled to alienate the property which stands in his absolute possession and ownership. On the basis of the admissions of the

petitioner himself, it can be seen that, petitioner is not having any possession or title over the plaint B schedule property. The respondent discontinued earlier case, as he alienated the property to 2nd respondent. The petitioner is not having any cause of action against the respondent herein. The 2nd respondent is having the right to make renovation in the property, purchased by him. Petitioner is not entitled to get any order of injunction and the petitioner is not having any prima facie case or balance of convenience in his favour. On the other hand, the balance of convenience is in favour of the respondent. Therefore, the petition is to be dismissed with the compensatory cost to the respondent.

7. 2nd respondent had filed counter statement by denying the petition averments. The above I.A is not maintainable either in law or on facts. The description as well as the boundaries of Plaint A to D schedule properties are totally incorrect. The petitioner has shown the incorrect boundaries of Plaint A schedule property with a malafide intention to grab the property in joint possession of the petitioner, his brothers and the 2nd respondent, who is the son of the brother of the petitioner. The 2nd respondent is the absolute owner in exclusive possession of the property having an extent of 14 Ares (35 cents) in Re. Survey. Block No. 34 of Re. Survey. No. 102/10-2 (Old Survey. No. 156/ 1A and 156/ 1B) of Pattimattom Village covered by Sale Deed Nos. 3227/1/2024 and 3244/1/2024 of SRO, Puthencruz. After the purchase of the property, the 2nd respondent had mutated the properties in his name and paid tax for the year 2024-2025 also. The property covered by Sale Deed Nos. 3227/I/2024 and 3244/I/2024 of SRO, Puthencruz exclusively belongs to the 2nd respondent and no other person has any right, title or possession over the same. At the time of purchase of the property by virtue of Sale Deed Nos 3227/1/2024 and 3244/1/2024 of SRO, Puthencruz, the said property was separated from the property of Kurivinchirangara Mariyam that situate on the western boundary of the property by

putting 3 line wires fencing with iron rods. The property of Muraleedharan lies on the eastern side of the property and the property of Chalakkattukudi Santhosh lies on the northern side and pathway and canal situates on the southern side of the property. The petitioner has no property adjacent to the property and he does not have any right by way of adverse possession over the property covered by Sale Deed Nos. 3227/1/2024 and 3244/1/2024 of SRO, Puthencruz.

8. The petitioner has no right over the properties lying adjacent to this property in any manner, as well. Material facts were purposefully suppressed by the petitioner before this Hon'ble Court and committed fraud on the Hon'ble Court. The petitioner is in possession of plaint B schedule and he is entitled to get an injunction against the respondent as trespasser, as stated is absolutely false. The Petitioner and his wife are in possession of other properties forming part of Re. Survey. Nos. 103 and 102/7, which is alleged to have been lying contiguously with the property obtained as per Gift Deed No.2531/1970 as stated is absolutely false. The petitioner has never been in possession of any property other than the property covered by Gift Deed No. 2531/1970 of SRO, Puthencruz. The petitioner is in possession of Plaint B Property, lying adjacent to Plaint A Schedule Property on its eastern end covered by as per Partition Deed No. 4675/1997 of SRO, Puthencruz as stated is absolutely false. After the year 1970, the petitioner built stone boundaries (kayyala) having height of about 4 feet enclosing both Plaint A & B Schedule properties and thus he has been in possession of Plaint B Schedule Property along with A Schedule property and has been possessing and using the same peaceably, openly, un-interruptedly, continuously as of right for the past 54 years as stated is absolutely false.
9. The petitioner had planted rubber trees (19 years). The property which is covered by Sale Deed Nos. 3227/I/ 2024 and 3244/1/2024 of SRO,

Puthencruz, the allegations with regard to the hostile title and possession are absolutely false and baseless. The allegation of the petitioner that, the rubber trees, coconut trees and Mahogany trees are planted in such a manner as having been done by him in continuation of the plantings done in Plaintiff A Schedule property and the property of the 1st respondent, which is in his actual possession are absolutely false and denied. There is no prima-facie case in favour of the petitioner. The balance of convenience is also in favour of the respondent and against granting the order of injunction. The description of properties, mentioned in the plaint is false, vague and ambiguous for identifying the properties. No prejudice will be caused to the petitioner if the interim injunction order is declined. Therefore, this petition is to be dismissed with cost to the respondent.

10. From the above rival contentions, the following points are settled for consideration:-
 1. Has the petitioner made out a prima facie case?
 2. Is the balance of convenience in favour of the petitioner?
 3. Will the petitioner be put to irreparable loss and injuries in the event of not granting the interim prohibitory injunction order?
 4. Order as to costs?

I.A 9/24:-

11. The petition averments in brief:- The suit is one filed seeking the relief of declaration of title, over plaintiff B schedule property on the strength of ownership and for perpetual injunction, against the respondents trespassing into the plaintiff schedule properties. The suit was filed on 25.07.2024. A temporary injunction application and an application seeking for mandatory injunction, along with a commission application, was filed by the petitioner along with the suit. Advocate commissioner

visited the properties on 26.07.2024, upon serving the notice to the petitioner and the 1st respondent. During the inspection, it was seen that, a few steps are being created beyond the fencing of the southern boundary of the plaint B schedule property. On 27.07.2024, the petitioner saw that, the respondents had brought a JCB and was clearing the canal bund road, by destroying the kayyala, that situates on its southern boundary. When the petitioner intervened, the 2nd petitioner threatened him and out of fear, he informed the JCB driver that, the petitioner had already filed the suit. The JCB driver continued to break down the kayyala and carved out earth from plaint B schedule property, as instructed by the 2nd respondent. Trees standing in the boundary wall also was uprooted. The petitioner returned home and thereafter, filed a police complaint. The 2nd respondent on that day cleared the entire bund road and also closed the water channel which passes through the area, by dumping mud from the bund road. The 2nd respondent after doing all these illegal activities, filed a false complaint before the Periyar Valley Irrigation Department on 30.07.24 alleging that, the petitioner had encroached the bund road and closed the water flow from the canal, restricting the water from the canal, lying west to the public road. After the filing of the suit, the respondents started to interfere with the property and are committing waste in the property. The petitioner would be put to severe loss and hardships, if the illegal interference made by the respondents are not stopped. Urgent orders are necessary, so as to prevent the respondent, from altering the lie, status and nature of plaint A and B schedule properties. Failure to issue orders would result in cutting and removal of trees, planted by the respondent and removal of earth, which supports the lands of the petitioner, and the trees therein, that lie near to the fence, destruction of kayyala on the north, south and eastern side of plaint B schedule property and destruction of evidence necessary to establish the claims of the petitioner. This application is filed as an abundant caution to prevent plaint A and B schedule properties. Hence it is necessary to

pass orders including status quo, restraining the respondents from interfering with the lie and nature of the property. Hence the petition.

12. 2nd respondent had filed counter statement by denying the petition averments. The above I.A is not maintainable either in law or on facts. The description as well as the boundaries of Plaint A to D schedule properties are totally incorrect. The petitioner has shown incorrect boundaries of Plaint A schedule property with a malafide intention to grab the property in joint possession of the petitioner, his brothers and this respondent, who is the son of the brother of the petitioner. The respondent is the absolute owner in title and possession of the property having an extent of 14 Ares (35 cents) in Re. Sy. Block No. 34 of Re. Sy. No. 102/10-2 (Old Sy. No. 156/1A and 156/1B) of Pattimattom Village covered by Sale Deed Nos. 3227/1/2024 and 3244/1/2024 of SR0, Puthencruz. The 2nd respondent purchased the said property from the 1st respondent. The aforementioned joint property of the petitioner and the 2nd respondent forms the western boundary of the 2nd respondents property. The southern boundary of 2nd respondents property and the property of the petitioner covered by gift deed No. 2531/1970 of SRO Pthencruz is a canal and the canal bund road. It is a common boundary and the same has nothing to do with the plaint A and B schedule properties. The 2nd respondent had cleared canal bund road alone, which is outside the petition A and B schedule properties. The petitioner had filed the above IA only to mislead this Hon'ble Court and to somehow obtain a status quo order, with respect to the plaint A and B schedule properties. The Advocate Commissioner visited the plaint schedule properties after serving notice to the petitioner and the 1st respondent alone. He was out of station at the time of inspection. The allegation of the petitioner in paragraph 3 of the petition is false. The JCB was brought to the plaint B schedule properties for destroying the kavyala situated on the southern boundary as stated is false. The JCB was brought for clearing the canal bund road, filled with full of grasses,

as admitted by the petitioner in the above IA.

13. No acts as alleged by the petitioner had taken place in the plaint A or B schedule properties on the alleged day. The case put forth by the petitioner is unsustainable and without any basis. After receipt of intimation of the filing of the above suit, the respondents started to interfere with the property viciously from the very next day and are committing waste in the property as stated is false. The petitioner was never put to any loss or hardship and he lacks any balance of convenience in his favour. The urgent orders are necessary to prevent the respondents from altering the lie, status and nature of plaint A and B schedule properties and committing waste and destruction of kayyala as stated is absolutely false. There is no occasion to pass such orders in favour of the petitioner. Therefore, this petition is to be dismissed with the cost to the 2nd defendant.
14. From the above rival contentions, the following points are settled for consideration:-
 1. Has the petitioner made out a prima facie case?
 2. Is the balance of convenience in favour of the petitioner?
 3. Will the petitioner be put to irreparable loss and injuries as claimed by ?
 4. Is the petitioner entitled to get the status quo order as prayed for?
 5. Relief and costs?
15. Heard both sides. From the side of petitioner, Ext. A1 to A20 documents were marked. From the side of respondents, Ext. B1 to B5 documents were marked. Ext. C1 and C1(a) were also marked.
16. **Point Nos.1 to 3 in both I.As:-** According to the petitioner, he is in

possession of plaint B schedule property, for more than 70 years. He had perfected the title over the plaint B schedule property, by adverse possession. The plaint B schedule property is lying in a compact plot, in contiguous to plaint A schedule property, within single demarcated boundaries. The 1st respondent who is residing beyond the canal, lying on the western side of the property, is well aware of the possession of the petitioner, over the plaint B schedule property and also regarding the claim of petitioner, in hostility towards the 1st respondent. So, as per the case of the petitioner, it is admitted that the plaint B schedule property stands in the ownership of the 1st respondent and the title of the 1st respondent is admitted. But, the petitioner had perfected his title by adverse possession. According to the 1st respondent, the petitioner had never acquired any right over the plaint B schedule property and the respondents are in possession of the property and the 1st respondent have the absolute title over the plaint B schedule property, by virtue of document bearing No. 876/1992 and 4675/1997. According to petitioner, they are in possession of the property for more than 70 years and if the possession is disturbed, then it will cause irreparable injury to the petitioner. The document bearing No. 2531/70 is produced and marked as Ext. A1, Ext. A2 is the copy of the plaint, Ext. A3 is the copy of the injunction application, Ext. A4 is the written statement, Ext. A5 is the copy of the commission report, Ext. A6 is the objection to the commission report, Ext. A7 is the copy of the application, Ext. A8 is the petition filed for amending the suit, in O.S 46/2020.

17. The learned counsel for the petitioner had argued that, the 1st respondent had filed the suit bearing No. O.S 46/20, which can be seen from Ext. A1 to A8 documents. Originally, the suit was filed for injunction, later on, application was filed to amend the suit to incorporate the prayer for recovery of possession. It was argued by the learned counsel for the petitioner that, after filing the written statement in the earlier suit, O.S 46/2020, the amendment application was filed

admitting the possession of the petitioner herein, and thereby, they sought for the relief of recovery of possession. The suit was not pressed with malafide intentions, and thereby, dismissed. So, the plaintiff in O.S 46/2020, that is the 1st respondent, is admitting the dispossession of the property, by the petitioner herein. Thereafter, the suit was dismissed also. According to the petitioner, after dispossession, it is not discernible how the 1st respondent had been in possession of the property, so as to alienate the property, to the 2nd respondent by conveying the property including possession. According to the petitioner, the document executed in favour of the 2nd respondent by handing over the possession, when the 1st respondent does not have any possession, over the property is void. So, according to the petitioner, the earlier suit was withdrawn, with malicious intentions, as the petitioner herein had raised the claim of adverse possession, over the disputed property.

18. The 1st respondent had stated in the counter statement that, when the property was alienated to the 2nd respondent, he was not intending to proceed with the suit and therefore, he had withdrawn the earlier suit. On going through the records, it can be seen that, the suit bearing No. 46/2020 was not decided on merits, so as to see the fact that, who is in possession of the property, on the date of filing of the suit. In the Ext.A8, amendment application, the 1st respondent had stated that, the petitioner herein, that is the defendant in the earlier suit had forcefully trespassed and taken possession of the property, that is the disputed property herein. As per the plaint averments in O.S 46/2020, the plaintiff in the suit, that is the 1st respondent is claiming to be in possession of the property, on the date of filing of the suit. As per the case of the 1st respondent in the earlier suit, the petitioner had taken forceful possession in the year of 2022. So, on the basis of the admission of possession in Ext. A8 amendment application, it is not possible to see the petitioner to be in possession of the property, prior to the date, stated in the amendment application. As the suit was not decided on merit, it is not possible to see the petitioner to

be in possession of the property, on the date of the suit, or prior to the same, by considering the pleadings in the earlier suit alone.

19. The Advocate commissioner in the earlier suit, O.S 46/2020, as per Ext. A5 had reported that, the plaintiff in the said suit was present in the plaint schedule property and the property was identified as shown by the plaintiff, that is the 1st respondent in this suit. It was reported that, soil was excavated from, half of the plaint schedule property and the remaining portion of the property, was lying at a height of about 3-15 feet from the portion excavated. The age of excavation is reported to be 2 years. The trees in the properties were also noted. The boundary in between the plaint schedule and the property of the defendant in the said suit, O.S 46/2020, were iron stumps, reported to be noted on the corners and the middle of the boundary. The iron stumps were covered with aluminum pipes. But, the iron fencing was seen to be removed as reported by the Advocate Commissioner. So, on going through Ext. A5 also, it is not possible to see the defendant in the earlier suit, that is the petitioner herein was in possession of the property prior to O.S 46/2020. So, these documents would not be helpful to see the petitioner to be in possession of property for the last 50 years or rather even for more than 12 years, as contemplated under Article 65 and Section 27 of the Limitation Act. Ext. A10 and A14 are the complaints preferred by the petitioner. So, the averments in those petitions would not be helpful to see the petitioner to be in possession of the property for more than last 12 years. Ext. A11 is the document bearing No. 4675/1997. Ext. A12 is the document bearing No. 876/1992, these are the documents executed in favour of the 1st respondent, which also would not be helpful to see the petitioner to be in settled possession of property for more than 12 years. Ext. A13 and A15 are the photographs on the date of the suit or subsequent to that, which also is not helpful to see the prior possession of the petitioner. The petitioner had produced copy of plaint, written statement and commission report in O.S 300/97. But, on

going through the plaint schedule in that suit and comparing with the schedule in this suit, it is not possible to see the disputed plaint B schedule is included in the plaint schedule in the suit bearing No. O/S 300/97 or not. Ext. B5 is a document produced from the side of the 2nd respondent, which would go to show that, the suit was decided in favour of one Kuriako in appeal. It was submitted that, the 2nd appeal is pending against the decision in O.S 300/97. So, on going through the schedule of O.S 300/97, it is not possible to discern, whether the plaint B schedule property is included or not. So, these documents were marked as Ext. A17 to 20 also is not helpful to see the petitioner in possession of the plaint B schedule property for the last more than 12 years.

20. The Advocate commissioner appointed in the suit had filed a report and rough sketch, which marked as Ext. C1 and C1(a). In Ext. C1 and C1(a), the commissioner had reported that, plaint B schedule property is lying abutting to the boundary of plaint A schedule property. On going through Ext. C1 and C1(a), it can be seen that, a survey stone is noted by the commissioner inside the plaint A schedule property and iron fence is noted, which demarcates the plaint A schedule and B schedule. The kayyalas noted on the north and south of the either sides of plaint A and B schedule properties, were noted to be having 42-50 years of age. The nature of the cultivation was also noted by the commissioner as per Ext. C1 and C1(a). It is reported that, both the cultivation in A and B schedule properties are of similar nature. At the same time, it is reported that, the rubber trees in the plaint A schedule property was seen to be tapped, while the rubber trees in plaint B schedule property were not seen to be tapped. So, it is not discernible why the rubber trees standing in both plaint A and B schedule, though are of same kind and nature, the trees in the A schedule property was seen to be tapped, but the trees in the B schedule which is claimed to be in the possession of the petitioner was not tapped.

21. Existence of a way, from the road through the plaint A schedule property, which further proceeds through the plaint B schedule property to its end, is noted by the commissioner in Ext. C1, C1(a). Recently made steps, were noted at the southern end of the plaint B schedule and the existence of iron fencing on the western side of the B schedule property, is noted by the commissioner as per Ext. C1 and C1(a). So, on going through Ext. C1 and C1(a), it can be seen that, the kayyalas noted on the northern and southern sides of the plaint schedule properties are of same age, that is 42-50 years. When the boundaries noted are of kattukayyala, a natural boundary, it is not possible to say that these kayyalas were made by the petitioner, unlike in a case of other forms of compound walls made of concrete or latrite stones etc. So, on the basis of the existence of kattukaayala alone, it is not possible to see the petitioner to be in possession of the property, for the last more than 12 years or 54 years or 70 years as claimed by, prima facie. The age of the way noted to be in existence through the plaint A schedule property till the end of the plaint B schedule, is not noted by the commissioner as per Ext. C1 and C1(a). So, on the basis of the existence of the way also, it is not possible to see the petitioner to be in possession of the property for the last more than 12 years, on the date of the suit. As per Ext. C1 and C1(a), it can be seen that, the plaint A and B schedule properties were demarcated with iron fencing.

22. It is not in doubt that, the factum of possession can only be decided on an elaborated trial at a later stage of the suit. The matter in adjudication is the possession over the plaint B schedule property. From the materials discussed above, available before the court, it is not possible to see the petitioner to be in possession of the property for more than 12 years as claimed by, prima facie. The plaintiff is admitting the title of the 1st respondent over the plaint B schedule property. It is well settled principle of law that, title follows possession and also no injunction can be passed against the true owner of the property. When

the possession is in question and if the possession can only be decided on trial, it is not possible to see the plaintiff to be in possession of the property until and unless his possession over plaint B schedule property is established to be for more than 12 years. So, on the settled principle of law that the possession follows title, it is not possible to see the petitioner to be in possession of the property, when the title is admitted to be vested with the 1st respondent, as per the case of the petitioner herein, until it is proved that the plaintiff had perfected his title by possessing the property for more than 12 years, in hostility to the right of the 1st respondent and also by proving all the ingredients, which would prescribe a possession to that of a title, as per Article 65 and Section 27 of the Limitation Act.

23. The alienation of the property in favour of the 2nd respondent was disputed by the petitioner herein, which is not a matter of adjudication, when the matter in adjudication is only that, whether the petitioner had perfected his title over plaint B schedule by adverse possession. The rights of the defendant over the property, is not a matter of adjudication. So, the arguments raised on the alienation of property in favour of 2nd respondent, does not assume any significance herein. On the other hand, the respondent had produced tax receipt, possession certificate and the order of the Mining and Geology Department, which goes to show a prima facie possession, in favour of the respondents herein. So, in view of the above discussions, I could not find the petitioner to be possession of the property for more than 12 years prima facie, so as to pass an order of injunction against the true owner of the property. Also, while considering the question of balance of convenience, if any injunction is passed against the title holder of the property and the suit is decided in favour of the respondents, then it will cause irreparable injury to the respondents when compared to the hardships to be caused to the petitioner herein. So, in my view the balance of convenience and the question of irreparable injury is in

favour of the respondents herein. Therefore, in view of the above discussions, I could not find the petitioner to be entitled for the temporary injunction as well as to maintain the status quo of the property as prayed for.

24. **Point No. 4:-** Considering the facts and circumstances of the case, I am not inclined to allow the costs of the proceedings.

25. In the result, both I.As stands dismissed.

Dictated to the confdl. asstt., transcribed and typed by her, corrected and pronounced by me in open court on this the 13th day of September, 2024.

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

APPENDIX

Petitioners Exhibits:-

A1.	13.7.1970	Copy of the Sale Deed No. 2531/1970 of SRO, Puthencruz.
A2.	24.1.2020	Copy of the plaint in O.S.No.46/2020 of Munsiff's Court, Perumbavoor.
A3.	24.1.2020	Copy of injunction order in O.S.No.46/2020 of Munsiff's Court, Perumbavoor.
A4.	-	Copy of the written statement in O.S.No.46/2020 of Munsiff's Court, Perumbavoor submitted on 25.7.2024
A5.	6.2.2020	Copy of the commission report in O.S.No.46/2020 of Munsiff's Court, Perumbavoor.
A6.	-	Copy of the objection to commission report in O.S.No.46/2020 of Munsiff's Court, Perumbavoor submitted on 25.7.2024

A7.	15.7.2023	Copy of the commission application in O.S.No.46/2020 of Munsiff's Court, Perumbavoor.
A8.	25.7.2023	Copy of the amendment application in O.S.No.46/2020 of Munsiff's Court, Perumbavoor.
A9.	29.5.2024	Copy of the land tax receipt of the Village Office, Pattimattom.
A10.	16.7.2015	Copy of complaint filed by K.P. Abraham with sketch before Village Officer, Pattimattom Village
A11.	21.10.1997	Copy of the Partition Deed No. 4675/1997 of the SRO Puthencruz.
A12.	25.2.1992	Copy of the Partition Deed No. 876/1992 of the SRO Puthencruz.
A13.	-	Photocopy of the photographs submitted on 25.7.2024.
A14.	-	Copy of the complaint filed by K.P.Abraham before the SHO, Kunnathunadu Police Station dated 28.7.2024 with receipt.
A15.	-	Photocopy of photographs submitted on 2.8.2024
A16.	30.7.2024	Copy of the complaint by Paul Varghese before Asst. Engineer, Periyar Valley Irrigation, Kolenchery.
A17.	29.5.1997	Copy of the plaint in O.S.No.300/1997 of Munsiff's Court, Perumbavoor.
A18.	13.6.1997	Copy of the commission report in I.A.No.1460/1997 in O.S.No.300/1997 of Munsiff's Court, Perumbavoor.
A19.	9.12.1996	Copy of the written statement in O.S.No.300/1997 of Munsiff's Court, Perumbavoor.
A20.	23.4.1984	Copy of the Sale Deed No. 1585/1984 of SRO, Puthencruz.

Respondents Exhibits:-

B1.	29.4.2019	Land tax receipt of Village Office, Pattimattom.
B2.	11.1.2018	Possession certificate of Village Office, Pattimattom.

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| B3. | 2.5.2018 | Proceedings of the Mining and Geology department, Ernakulam. |
| B4. | 15.3.2018 | Copy of the building permit of Grama Panchayath Kunnathunadu. |
| B5. | 7.6.2005 | Copy of the order in A.S.No.56/2005 & 207/2005 of District Court, Ernakulam. |

Court Exhibit:-

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|------------|----------|---|
| C1 & C1(a) | 1.8.2024 | Commission report and Rough sketch submitted by Adv. Ashish Paul. |
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Witness Exhibit:- Nil

Witness both sides:- Nil

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

// True Copy //

(Carbon Copy issued as per order in I.A.No.10/2024 in I.A.No.9/2024 in I.A.No.3/2024 in O.S.No.187/2024 dated 18.9.2024)

Sd/-
Examiner/Junior Superintendent

jpp/-
Compd.by : smn.

Carbon copy of Common
Order in I.A.Nos.3/2024 &
9/2024 in O.S. No.187/2024
Dated : 13.9.2024