

IN THE COURT OF THE RENT CONTROLLER/MUNSIFF
PERUMBAVOOR

Present:- Smt. Alshari A., Munsiff

Tuesday, the 12th day of July, 2022/ 21st Ashadha 1944.

I. A No.01/2022 in O. S. No.123/2022

Petitioners/Plaintiffs:-

- 1 C M Baby, Aged 68 years, S/o. C V Mathai, Cheerethu Bhavan, Near Aasramam Higher Secondary School, Perumbavoor Village, Perumbavoor, Kunnathunadu Taluk, Ernakulam District.
2. Lissy, Aged 66 year, W/o. C M Baby, Aged 68 years, Cheerethu Bhavan, Near Aasramam Higher Secondary School, Perumbavoor Village, Perumbavoor, Kunnathunadu Taluk, Ernakulam District.

By Adv. B. Reghukumar

Respondents/Defendants:-

1. Simi Jacob, Aged about 48 years, W/o. Late Thomas Mekkamalil, Mekkamalil House, Methala P O, Asamannoor Village, Odakkali, Kunnathunadu Taluk, Ernakulam District.
2. Yacob, Aged 72 years, Mekkamalil House, Methala P O, Asamannoor Village, Odakkali, Kunnathunadu Taluk, Ernakulam District.
3. Aneetta Thomas, Aged 22 years, D/o. Late Thomas Mekkamalil, Mekkamalil House, Methala P O, Asamannoor Village, Odakkali, Kunnathunadu Taluk, Ernakulam District.
4. Benson Thomas, Aged 20 years, S/o. Late Thomas Mekkamalil, Mekkamalil House, Methala P O, Asamannoor Village, Odakkali, Kunnathunadu Taluk, Ernakulam District.

By Adv. Joji Issac.

This petition having been finally heard before me on 04/07/2022 and the court on 12/07/2022 passed the following:-

ORDER

1. Heard both sides.
2. According to the petitioner, the property of the respondents are lying on the western side of plaint A schedule property and southern side of the plaint B schedule property. On the western side of the respondents property and plaint B schedule property lies the Vandamattom-Odakkali road in south-north direction. Moreover, there is a way in east-west direction on the southern side of the respondents property. Petitioners entered into plaint A schedule property through plaint B schedule way. There is a farm functioning in the plaint A schedule property. For the protection of the plaint A schedule property on the southern and northern side of the plaint B schedule property, a compound wall was constructed on the western side using hollow bricks and also a gate was fixed. The respondents requested to sell the property for which the petitioners were not amenable, due to the same, there arose dispute in between them. Thereby, the respondents threatened the petitioners that they will demolish the compound wall. Also, they tried to destroy the boundaries since the petitioners are residing about 8 kilometers away from the property by misusing the same, the respondents are causing damage to the property by encroaching into the same. The respondents had tried to encroach upon the property and tried to destroy the compound wall on 31.03.2022. On the timely intervention of the petitioners, they had retreated from the spot. If the respondents encroach into their property, it will adversely affect the farm being functioning and the cultivation being done in the property. It will cause irreparable injury to the

petitioners. The petitioners are having a prima facie case and the balance of convenience is in favour of them. Hence, the petition.

3. The respondent had filed counter statement denying the petition averments. According to the respondent, the Vandamattom-Odakkali road is lying at a height of about 15 feet from the property of the respondents. On the southern side of the respondents property lies a private way at a height of about 10 feet. The suit is filed so as to obstruct the vehicular transportation to the property of the respondents through plaint schedule way. The way which was in existence on the northern side of the respondents property was widened by surrendering the property having 1 ½ cents for the formation of the way as it was agreed to be used by the respondents. The property of the respondents which is lying at a lower terrine reclaimed to the height of plaint B schedule way and also a ramp was made to enter into their property. Also a gate was fixed to enter into the plaint B schedule way which is being used. But the petitioners are trying to obstruct the usage of plaint B schedule way by the respondents. They are not able to do the same due to the interference of the neighbours and public. The petitioners had constructed a compound wall with 4 feet in height above the retaining wall of the respondents and the ramp constructed by the respondents so as to enter into the way. When it was closed, the compound wall was demolished and the vehicular transportation was restored. The petitioners had filed the suit only to coerce the respondents and to grab the property. The respondents had never tried to destroy the boundaries and they had not encroached or tried to encroach into the plaint schedule property. The petitioners are causing much chaos in the place. The suit is intended to cause hardships to the respondents. The suit is prima facie not maintainable and the balance of convenience is in favour of the respondents. If the injunction is allowed it

will cause obstruction to the vehicular transportation. Hence, the petition is to be dismissed.

4. The Advocate commissioner had inspected the property and filed commission report and wherein it is reported that the gate was seen fixed by closing the way. The compound wall and the gate seen noted to be having an age of about 6 months. On the entrance of the plaint B schedule way was seen a ramp to have constructed and the hollow bricks wall seem to be demolished on the portion of the ramp through which the respondents can enter into the property. The remnants of the demolished wall seen noted in the place. So the commission report would show that the the ramp which is seen to be noted through which it is entered to the respondents property was cleared by removing the hollow bricks. The petitioners are seeking for temporary injunction so as to restrain the respondents from demolishing the compound wall or destroy any boundaries or encroach into the plaint schedule property. As per the commission report it can be seen that the compound wall or the portion through which it enter to the respondents property is already demolished and the way or the ramp made to enter into the respondents property also got cleared. The prayer is in a nature of temporary prohibitory injunction so the constructions seem to be removed cannot be restored. At the same time, the respondents had filed an undertaking affidavit by stating that he is ready to maintain the status quo as reported by the commissioner. So to have a fair adjudication of the suit the status quo seem to be maintained. So by recording undertaking affidavit filed by the respondents, both parties are directed to maintain the status quo seen by the Advocate commissioner, till the disposal of the suit.
5. In the result, the petition is disposed off accordingly.

Dictated to the confdl.asstt., transcribed and typed by her, corrected and pronounced by me in open court on this the 12th day of July, 2022.

Sd/-
ALSHARI A.
MUNSIFF

Appendix:- NIL

Id/-
Munsiff
(By Order)

// True Copy //

Junior Superintendent

Typed by: jav
Cmpd by:

Copy of Order in

IA.01/2022 in OS 123/2022
Dated : 12/07/2022