

IN THE COURT OF THE MUNSIFF, PERUMBAVOOR

Present:- Smt. Alshari A., Munsiff

Monday, the 13th day of March, 2023/ 22nd Phalguna, 1944

IA Nos. 02/2022 and 03/2023

in

OS. 420/2016

Petitioners/Defendants:-

- 1 Devarajan Pilla, Aged 72 years, S/o. Sankarankunji, Chakkasseril House, Kaithakkadu Kara, Pattimattam Village, Kunnathunadu Taluk.
2. Vikraman Nair, Aged 69 years, S/o. Balakrishnan Nair, Valethu House, Kaithakkadu Kara, Pattimattam Village,
3. N N Sasi, Aged 63 years, S/o. Narayanan, Neelakkuzhiyil House, Kaithakkadu Kara, Pattimattam Village.
4. Rajesh Kumar, Aged 41 years, S/o. Madhavan Nair, Thakaraparambil House, Chengara Kara, Pattimattam Village.
5. Robin V Ravi, Aged 32 years, S/o. Ravi, Vazhappillyil House, Kaithakkadu Kara, Pattimattam Village.
6. Karthu, Aged 66 years, W/o. Kannan, Pallathukudy House, Kaithakkadu Kara, Pattimattam Village.
7. Saraswathy, Aged 54 years, W/o. Kuttappan, Kottuvelippadavil House, Chengara Kara, Pattimattam Village.

By Adv. G Govindan Nair

Respondents/Plaintiffs:-

- 1 Dr. Thomas, Aged 77 years, S/o. Dr. Varghese, Poozhikkalayil, Kaithakkadu Kara, Pattimattom Village, Kunnathunadu Taluk, Now residing at Kulathil Hose, Skyline Flat, Apartment No.6A, Kavadiyil P O, Thiruvananthapuram Corporation.
2. George, Aged 50 years, S/o. Dr. Thomas , Poozhikkalayil, Kaithakkadu Kara, Pattimattom Village, Kunnathunadu Taluk, Now residing at Kulathil Hose, Skyline Flat, Apartment No.6A, Kavadiyil P O, Thiruvananthapuram Corporation.

By Advs. P T Geevarghese & Praju K Paul

These petitions having been finally heard on 08/03/2023 and the court on 13/03/2023 passed the following:-

C O M M O N O R D E R

1. Heard both sides.
2. These are the petitions filed for allowing joint trial of the suit along with O.S 14/2020 and to remove the case from the special list. According to the petitioner, the suit bearing No. O.S 14/20 is a comprehensive suit for declaration of title, recovery of possession and seeking permanent prohibitory injunction, in which the petitioner herein is also a defendant in O.S 14/20. The plaintiffs are also defendants in O.S 14/20. So, there is every chance for conflicting decisions, the documents of both the cases are same. So, therefore this petition is to be allowed.
3. The respondent had contended that the plaintiff in O.S 14/20 is not a party to this suit. It is not discernible what is the locus standi of this petitioner to protect the rights of the plaintiffs in O.S 14/20. This suit is a representative suit and any of the parties had any dispute they ought to have got impleaded in the suit. If there is any dispute pertaining to the property then the plaintiffs in O.S 14/20 ought to have got impleaded in this suit without get impleaded in the representative suit, a new suit is filed with an intention to drag the matter. The defendants in O.S 14/20 is Government who had not even filed written statement. Hence, the petition is to be dismissed with costs of this respondent.
4. As per the plaint averments in this suit, the property got assigned from the Government in favour plaintiff as per purchase bearing No. PF 26/66. On the other hand, the subject matter in the suit in O.S 14/20 is to have recovery of possession from the Government. O.S 14/20 is seeking

declaration of title, recovery of possession and the permanent prohibitory injunction, whereas this suit is for fixation of boundary and seeking permanent prohibitory injunction. As per the case of this plaintiffs herein, he had got the property assigned from Government whereas the suit bearing No. O.S 14/20 is against the Government from whom the plaintiffs is claiming to have derived his title. Since, the subject matter in both the suits are same even though the plaintiffs in O.S 14/20 are not a party in this suit. The plaintiffs herein are defendants in O.S 14/20. O.S 14/20 is a comprehensive suit which decides title and also for recovery of possession. Since the subject matter of the suit is same in both the cases and as the title over the plaint schedule property is to be decided in O.S 14/20, there is every chance for conflicting decisions, if the suit is separately tried and disposed off since this suit is filed seeking fixation of boundary and permanent prohibitory injunction. So, considering the nature of suits based on nature of right claimed over the same subject matter, in my view, it is necessary to try jointly to avoid conflicting decision and to have convenient disposal of the suits. Therefore, I am of the view that this petition is to be allowed and case is to be removed from the list so as to have a joint trial of O.S 14/20 with this suit. Considering the nature of the suit, O.S 14/20 is to be considered as a leading case.

5. In the result, the petition stands allowed.

Dictated to the confdl.asstt., transcribed and typed by her, corrected and pronounced by me in open court on this the 13th day of March, 2023.

Sd/-
ALSHARI A.
MUNSIFF

Appendix:-Nil

// True copy //

Id/-
Munsiff
(By Order)

Id/-
Junior Superintendent

Typed by: jav
Compd.by : Maya

Copy of Common Order
in
IA No. 02/22 & 3/23
in OS. 420/2016
Dated : 13/03/2023