

IN THE COURT OF THE MUNSIFF, PERUMBAVOOR

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

Monday, the 9th day of December, 2024 / 18th Agrahayana, 1946.

I.A.No. 1958/2019

in

O.S. No. 272/2018

Petitioners/Plaintiffs:-

1. K.G. Eldhose, aged 56 years, S/o. Geevarghese, Kakkattil House, Airapuram Kara, Airapuram Village.
2. Ammini, aged 54 years, W/o. K.G. Eldhose, Kakkattil House, Airapuram Kara, Airapuram Village.

By Advs. G. Govindan Nair & George Mathew

Respondent/Defendant:-

Pavithran, aged about 34 years, S/o. Ramachandran, Manayath House, Airapuram Kara, Airapuram Village.

By Adv. G. Santhoshkumar.

This petition having been finally heard before me on 23.11.2024 and the court on 9.12.2024 delivered the following:-

O R D E R

1. Heard both sides.
2. According to the petitioner, the suit was originally filed for an injunction restraining the defendant from using the B schedule way, for any purpose other than transportation. The defendant is claiming that, he is entitled to use the B schedule way for drawing electric cable, telephone

and water connections. As per the recitals in document bearing No.407/2003, Sreedharan got only the right of transportation through the plaint B schedule way, which was lying separated with compound wall on either sides. But, in the subsequent transfer deeds in addition to the right of transportation, the right to draw electric cable, telephone and water connections are also fraudulently incorporated. Such incorporation of rights which the transfer or never has is null and void. After the purchase of plaint A and B schedule property, the plaintiff left his strip of land having a width of 50 centimeters along the northern margin of the plaint A schedule property, abutting the last limb of B schedule, by demolishing the separation there. This was done by the plaintiffs to facilitate laying of pipelines and outlets for water lifted irrigation. Admittedly, that strip of land is not a part of B schedule way. Now, due to the institution of the suit, the defendant is in enimical terms with the plaintiffs. Due to such enmity, the defendant is attempting to take vehicles through such portions which is not a part of B schedule and thereby, cause loss and damages to the pipelines and the outlets laid by the plaintiffs. Defendant have no right to encroach upon or to take any vehicles through the portions which is the part of plaint A schedule property. The attempt of the defendant is unlawful. Due to the threat of the defendant, the plaintiffs are making arrangements to reinstate compound wall, separating plaint A and B schedule properties, leaving the 10 feet width way intact. Now, the defendant is obstructing the plaintiffs from reinstating the compound wall there. Therefore, it is not possible without the intervention of the court to reinstate the compound wall there, so as to protect his property and irrigation in the property. Therefore, the suit is to be amended by incorporating the prayer.

3. The respondent had filed objection by stating that, the petition is not maintainable either in law or on facts. Plaint B schedule way is clearly lying demarcated within granite stone foundations on either sides.

There is a compound wall above the same to a height of 2 1/2 feet and it is so reported in the commission report. It is now stated that, at the end of the plaint B schedule way, there is a portion of property left behind to lay down pipe lines and by claiming the same, the amendment petition is filed. Even before the inspection of the property by the Advocate commissioner, the plaint B schedule way is lying demarcated in place. Plaint can be amended only for the cause of action, already stated in the suit. The cause of action stated is the date of registration of the document bearing No.3665/2017 dated 11/09/2017. It is not stated, what is the date on which the cause of action for the amendment arose. The cause of action for the amendment sought for is something else. If the petition is allowed, the nature of the suit will change. Hence, the petition is to be dismissed with the cost of this respondent.

4. According to the petitioner, a small portion of property that is part of A schedule is left remaining and therefore, it is necessary to reinstate the compound wall. In the suit, there is no case that there was any compound wall and it was subsequently demolished so as to reinstate the same. Even that be so, the plaintiffs are claiming a portion of plaint A schedule property to be left remaining without compound wall. The defendant have no claim of right over the plaint A schedule property. Even though, the plaintiffs are seeking further extension of the relief, sought for in the suit, it does not itself change the nature of the suit as such. It is only an extension of the right claimed in the plaint, which is sought for restraining the respondent from using the B schedule way for any other purpose other than transportation. The defendant have no claim of any right over the plaint A schedule property. It is true that, the plaintiffs had not sought for any relief pertaining to plaint A schedule property in the suit. Even that be so, the right of the plaintiffs over the plaint B schedule property is not disputed by the defendant. Therefore, by seeking for extension of relief pertaining to plaint A schedule property or a portion of property left remaining to be part of plaint A

schedule property as sought for would not itself change the character of the suit when the adjudication is the right of the plaintiffs over the A schedule and B schedule as well. As per the case of the plaintiff, the B schedule also belonged to him, though, the defendant is having the right of transportation through the plaintiff A schedule property. So, the matter in adjudication is regarding the right or possession of plaintiffs over the property that belong to him, that is whether any portion of it is lying as a way or not. The matter in adjudication is regarding the entire property in possession of the plaintiffs. So, even if the plaintiffs are seeking for a relief pertaining to plaintiff A schedule property and a portion is stated to be lying left remaining with him are that would not itself change the nature of the suit when the relief sought for can only be seen to be an extension of right claimed over his property. On the other hand, by adjudicating those matters, no prejudice would be caused to the other side, when the defendant have no claim of any right over the plaintiff A schedule property. So, the contentions raised are the matters to be adjudicated in the suit. So, to adjudicate the contentions also and to resolve the entire controversies in between the parties and also to avoid multiplicity of the suit, this petition is to be allowed by amending the plaint as prayed for. Hence, this petition stands allowed. Carry out amendment.

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 9th 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.

jpp/-
Compd.by : smn.

Copy of Order in
I.A. No. 1958/2019 in
O.S. No. 272/2018
Dated : 9.12.2024