

IN THE COURT OF THE MUNSIFF, PERUMBAVOOR

Present:- Sri. Atheek Rahman, Munsiff

Friday, the 8th day of January, 2021/ 18th Pousha, 1942.

I.A. No. 1/2020 and 5/2020 in O.S. No. 329/2020

I.A. No. 1/2020

Petitioner/ Plaintiff:-

Najeeb, aged 39 years, S/o Marakkar, Vattapparambil Kollamkudy House, Vengola Kara, Arackappady Village, Kunnathunadu Taluk.

By Advs. M/s. Basil Kuriakose and Ciju I.S.

Respondent/ Defendant:-

Assya Umma, aged 72 years, W/o Bava, Vattapparambil Kollamkudy House, Vengola Kara, Arackappady Village, Kunnathunadu Taluk.

By Adv. Sri. M.K. Jayapalan

I.A. No. 5/2020

Petitioner/ Defendant:-

Assya Umma, aged 82 years, W/o Bava, Vattapparambil Kollamkudy House, Vengola Kara, Arackappady Village, Kunnathunadu Taluk.

By Adv. Sri. M.K. Jayapalan

Respondent/ Plaintiff:-

Najeeb, aged 39 years, S/o Marakkar, Vattapparambil Kollamkudy House, Vengola Kara, Arackappady Village, Kunnathunadu Taluk.

By Advs. M/s. Basil Kuriakose and Ciju I.S.

These petitions having been finally heard before me on 07/01/2021 and the court on 08/01/2021 passed the following:-

COMMON ORDER

1. IA 01/2020 is filed by the petitioner/plaintiff under O. 39. R. 1 for passing a temporary injunction order against respondent/defendant. IA 05/2020 is filed by the petitioner/defendant under O. 39 R. 1 for passing a temporary injunction order against respondent/plaintiff. Both the petitions are supported by affidavit sworn by the petitioners.

2. Brief averments in the affidavit in support of **IA No. 01/2020** are as follows:- Suit is filed for permanent prohibitory injunction. Plaint schedule property belongs to petitioner by virtue of sale deed No. 2728/2005 executed by the father of the petitioner. Nutmeg, coconut, arecanut and plantains are cultivated in the plaint schedule property. Apart from the above, valuable trees are also standing therein. Respondent is the wife of Bava who is the brother of the father of the petitioner. On the northern side of the plaint schedule property 4 cent colony and the property of respondent are lying. Plaint schedule property is well bounded on its four sides. But, the respondent removed few boundary stones separating the plaint schedule property and property of the respondent.

On 22.08.2020 respondent and her men tried to trespass on the plaint schedule property and to fell few standing trees therein. Since respondent is a nearer relative, petitioner tried to settle the matter through mediators. But, the respondent was not conceded and she threatened that she will trespass on the plaint schedule property and fell the standing trees therein. It is also averred that the petitioner has got reliable information that respondent agreed with some persons to sell the trees standing in the plaint schedule property. Petitioner could not prevent the illegal acts of the respondent without the intervention of the court. Petitioner has a prima facie case and balance of convenience is in favour of the petitioner. Hence, the petition for passing a temporary injunction order restraining the respondent and her men from trespassing on the plaint schedule property, felling the standing trees therein and doing any act detrimental to the rights of the petitioner therein till the disposal of the suit.

3. Respondent filed objection as follows:- Petition is not maintainable either in law or on facts. The description of the petition schedule property is wrong and misleading. Petitioner filed the suit as well as the petition on the basis of a forged document. Respondent is the owner in possession of 37 cents of land covered by sale deed No. 645/1957 and exchange deed No. 2817/1979. The exchange deed is executed between the father of the petitioner and respondent. In her property nutmeg, coconut and other valuable trees are standing. Respondent is in exclusive possession and enjoyment of the same. There is a two feet height difference between the property of petitioner and respondent. The father of the petitioner executed sale deed in favour of the petitioner including the property of the respondent covered by exchange deed No. 2817/1979. The said sale deed is a forged document. On the basis of the said deed, the petitioner did not get any right in the property. Father of the petitioner has filed a suit for fixation of boundary and permanent prohibitory injunction as

O.S 91/2012 with respect to the property covered by exchange deed No. 2817/1979. In the said suit, as ordered by the court Advocate commissioner had inspected the property and a plan was prepared. In the said suit, as per the decree court fixed the boundary separating the property of the father of the petitioner and the respondent through FD line of the said plan. Further, a permanent prohibitory injunction decree was also passed against the respondent from trespassing on the property of the father of the petitioner. Against the said decree, father of the petitioner filed appeal before the Hon'ble Sub Court, Perumbavoor as A.S 79/15 and subsequently it was withdrawn. Thereafter, the respondent filed execution petition before this court as EP No. 19/2020 for executing the decree in O.S 91/2012 and it is pending. In the said EP, notice served on the father of the petitioner. Suppressing all these facts petitioner filed the present suit as well as the petition. The averment that petitioner has got the plaint schedule property by virtue of deed No. 2728/2005 of the SRO Perumbavoor and he is paying land tax is false. The father of the petitioner has no right to transfer the entire property covered by the said deed. The plaint description is not correct. Petitioner included the portion of the property of the respondent in the plaint description. Thereby, the petitioner has mislead the court and obtained an injunction order. Petitioner has no right over the standing timbers in the property of the respondent. The averments that on 28.05.2020 respondent and her men tried to trespass on the plaint schedule property and to cut and remove the standing trees therein is false. When the inhabitants of the 4 cent colony demanded to cut and remove the trees standing in the property of the respondent in a threatening condition, respondent cut and removed those trees and sold the same. There is no prima facie case in favour of the petitioner and balance of convenience in his favour to get an order from the court. Hence, respondent prayed to dismiss the petition with her costs.

4. **I.A 05/2020** is filed by the petitioner/defendant against the respondent/plaintiff stating the averments in the objection filed to IA No. 01/2020 for passing a temporary prohibitory injunction restraining the respondent/plaintiff and his men from trespassing on the petition schedule property, causing obstruction to the petitioner/defendant in cultivating in the petition schedule property and causing any obstruction to the enjoyment of the same by the petitioner/defendant till the disposal of the suit.

5. The respondent/plaintiff filed objection stating the facts pleaded in the affidavit in support of I.A 01/2020. Further, he averred that the petitioner/defendant has no right to possess 37 cents of land as alleged. The averment in the affidavit in support of the petition that there is two feet height difference between the property of the petitioner/defendant and respondent/plaintiff is false. O.S 91/2012 and the present suit based on different causes of action and different set of facts. Plaint schedule property was not measured by the Advocate commissioner in OS No. 91/2012 as alleged in the petition. Hence, the said commission report is not applicable in this case. Further, he averred that in O.S 91/2012 the respondent/plaintiff was not a party. As to his knowledge, father of the petitioner had withdrawn the appeal preferred by him against the decree and judgment in O.S 91/2012 with liberty to file fresh suit. Respondent/plaintiff did not know anything about E.P 19/2020 pending before this court. The decree in O.S 91/2012 is not in force. As per the exchange deed No. 2817/1979, the petitioner/respondent had transferred 44 cents of property in favour of the father of the petitioner. Further, the petitioner/defendant sold some extent of property to different persons and now she is in possession of the property extending 7.520 cents. If, the petition is allowed the respondent/plaintiff will be put to irreparable loss and hardships. Hence, he prayed to dismiss the petition with his costs.

6. From the above rival contentions, the following points are settled for consideration: -

1. Has the petitioner in IA No. 01/2020 made out a prima facie case?
2. Is the balance of convenience in favour of the petitioner in IA No. 1/2020?
3. Will the petitioner in IA No. 01/2020 be put to irreparable loss and injuries in the event of not granting the temporary injunction order?
4. Has the petitioner in IA No. 05/2020 made out a prima facie case?
5. Is the balance of convenience in favour of the petitioner in IA No. 05/2020?
6. Will the petitioner in IA No. 05/2020 be put to irreparable loss and injuries in the event of not granting the temporary injunction order?
7. Order as to costs?

7. Both sides were heard. For the purpose of reference Ext. A1 to A13 documents were marked from the side of petitioner/plaintiff and Ext. B1 to B8 documents were marked from the side of respondent/defendant. Commission report was marked as Ext. C1 and rough sketch prepared by the Commissioner was marked as Ext. C1(a).

8. **Point Nos. 1 to 6:-** For the purpose of convenience and to avoid repetition these points are considered together. Herein after the parties are referred as that of their rank in IA No. 01/2020. In I.A 01/2020 on 26/08/2020 an

ad-interim injunction order was passed restraining the respondent from trespassing on the plaint schedule property, felling trees standing in the plaint schedule property and committing any acts of waste therein until further orders.

9. The specific case of the petitioner is that plaint schedule property belongs to him by virtue of Ext. A1 sale deed No. 2728/2005. He is in possession and enjoyment of the said property. The photocopy of the possession certificate dated 30.01.2016 is marked as Ext. A2. The photocopy of the location sketch of the plaint schedule property is marked as Ext. A3. The photocopies of the land tax receipt dated 04.06.2020 and 03.06.2020 with respect to plaint schedule property are marked as Exts. A4 and A5 respectively.

10. According to petitioner, the plaint schedule property belonged to his father. Respondent/defendant is the wife of Bava who is the brother of the petitioner's father. Petitioner would contend that plaint schedule property lies within specified boundaries. The four cent colony and respondent's property are lying on the northern side of the plaint schedule property. The plaint schedule property and respondent's properties are separated with boundary stones. Petitioner is alleging that recently, respondent and her men removed few boundary stones and on 22.08.2020 tried to trespass on the plaint schedule property and to fell the standing trees therein. Since the respondent being a nearer relative, petitioner tried for a settlement. But, she was not conceded and further, she has threatened to trespass on the plaint schedule property and will cut and remove the standing trees therein. Hence, he approached this court with the suit along with I. A No. 01/2020 for passing a temporary injunction order restraining the respondent and her men from trespassing on the plaint schedule property, felling the standing trees therein and doing any act detrimental to the rights of the petitioner therein till the disposal of the suit.

11. Respondent would contend that the petitioner approached this court with most unclean hands by suppressing the material facts. According to respondent, she is the owner in possession of 37 cents of property covered by Ext. B1 sale deed No. 645/1957 and Ext.B2 exchange deed No. 2817/1979 (which is marked as Ext. A6) by virtue of Ext. B1 deed she has obtained 18.500 cents of property and by virtue of Ext. B2 exchange deed she has obtained 18.500 cents. The said 37 cents of property scheduled in I.A No. 05/2020 as the petition schedule property and it is in possession and enjoyment of the respondent. Ext. B2 exchange deed was executed between the father of the respondent and petitioner in the year 1979. The B schedule of Ext. B2 exchange deed was transferred by the father of the petitioner in favour of the respondent and respondent transferred two items of properties in A schedule of the said deed in favour of the petitioner's father. According to respondent, Ext. A1 deed is a forged document since, the father of the petitioner executed said deed by including the property transferred to the respondent by virtue of Ext. B2 exchange deed. The description of the plaint schedule property in the plaint is also not correct. Hence, respondent would contend that petitioner is not entitled to get any relief with respect to the plaint schedule property including the property belongs to respondent covered by Ext. B2 exchange deed. Further, she would contend that in the year 2012 father of the petitioner filed O.S 91/2012 seeking relief to fix the boundary separating the properties covered by Ext. B2 exchange deed and a decree of permanent prohibitory injunction restraining the respondent from trespassing on A schedule properties of Ext. B2 exchange deed. The said suit was decreed and the court fixed the boundary separating both properties through FD line shown by the Advocate commissioner in the plan. Being aggrieved by the decree the father of the petitioner approached the Hon'ble Sub Court, Perumbavoor through A.S No. 79/2015. But, the said appeal was withdrawn. Subsequently, the respondent filed E.P No. 19/2020 for

executing the decree since, the father of the petitioner has not filed execution petition so far. In the said execution petition notice is served on the father of the petitioner and it is pending.

12. Respondent would contend that the property transferred to her by virtue of Ext. B2 deed was covered by Ext. B3 settlement deed No. 2527/1975. The said settlement deed was executed by the grandfather of the petitioner in favour of his sons including the father of the petitioner. The father of the petitioner has no right to transfer the entire property covered by Ext. B3 settlement deed by including the B schedule property of Ext. B2 exchange deed in favour of his son. Even if any property was transferred to petitioner including the portion of the respondent's property, petitioner will not get any right over the same. In order to substantiate her case, she has produced the photocopy of the judgment in O.S 91/2012, the photocopy of the certified copy of the decree along with plan, the photocopy of the judgment in A.S 79/2015, tax receipt dated 06/05/2020 with respect to the petition schedule property belongs to respondent and those documents were marked as Exts. B4 to B8 respectively. Hence, she filed I.A No. 05/2020 for passing a temporary prohibitory injunction order restraining the respondent/plaintiff and his men from trespassing on the petition schedule property, causing obstruction to the petitioner/defendant in cultivating in the petition schedule property and causing any obstruction to the enjoyment of the same by the petitioner/defendant till the disposal of the suit.

13. In order to counter I.A No. 05/2020 the petitioner/plaintiff would contend that respondent has no right to possess 37 cents of property as alleged by her since she has sold some extent of her property to different persons. To substantiate that contentions petitioner/plaintiff produced Exts. A7 to A12 documents. Further, he produced the photocopy of the fair area list and form of

field register with respect to the property comprised in re-survey Nos. 331/1 and 331/2 of Vengola village and marked as Ext. A13. The petitioner/plaintiff also would contend that he is not a party to O.S 91/2012 and Exts. B4 and B5 judgment and decree along with plan is not binding on him. He also would contend that plaint schedule property is not measured while preparing the plan appended along with Ext. B5 decree. Hence, he prayed to dismiss I.A No. 05/2020 filed by respondent/defendant.

14. From Ext. A1 deed No. 2728/2005 it can be seen that father of the petitioner transferred the property covered by Ext. B3 settlement deed No. 2527/1975 comprised in re-survey Nos. 86/18 and 86/5 corresponding to old sy. Nos. 442/1, 442/6/2, 442/2 and 442/3/1. The extent of the property is 29.05 Ares equivalent to 71.10 cents of property. On going through Ext. A3 location sketch it can be seen that the northern side boundary of the plaint schedule property is sharing boundary with four cent colony and the property of the respondent. The commissioner also identified the plaint schedule property and filed Ext. C1 report and C1(a) rough sketch. The case of the respondent is that petitioner included the portion of her property covered by Ext. B2 exchange deed. As per Ext. B2 exchange deed property extending 9.71 Ares comprised in old sy. No. 442/1 and 8.90 Ares comprised in old survey No. 443/1 were transferred by the respondent to the father of the petitioner. In turn, the father of the petitioner transferred the property extending 7.48 Ares comprised in old survey No. 442/8. From Ext. B2 it is clear that father of the petitioner has got said 7.48 Ares of property comprised in old survey No. 442/6/2 by virtue of Ext. B3 settlement deed No. 2527/1975. Father of the petitioner was assigned with the B schedule property of Ext. B3 settlement deed No. 2527/1975. On going through the B schedule of Ext. B3 settlement deed, father of the petitioner has got 12.54 Ares of property comprised in old survey No. 441/14/1, 4.85 Ares of property

comprised in old survey No. 333/2, 2.20 Ares of property comprised in old survey No. 332/9/2, 9.31 Ares of property comprised in old survey No. 332/9/3, 4.45 Ares of property comprised in old survey No. 332/9/4, 9.71 Ares of property comprised in old survey No. 442/1, 7.48 Ares of property comprised in old survey No. 442/6, 5.26 Ares of property comprised in old survey No. 442/2, 1.21 Ares of property comprised in old survey No. 441/13 and 4.40 Ares of property comprised in old survey No. 442/3/1. On going through Ext. A1 petitioner has got the properties comprised in old survey Nos. 442/1, 442/6/2, 442/2 and 442/3/1. As per the description in Ext. A1, the extent of the property shown as $71\frac{3}{4}$ cents of property. But, on going through the extent in Ext. B3 settlement deed in the said survey numbers Nos. 442/1, 442/6/2, 442/2 and 442/3/1 the total extent assigned to the father of the petitioner will come to 26.85 Ares of property equivalent to 66.454 cents. If that be so, prima facie, it can be seen that the extent shown in Ext. A1 and Ext. B3 settlement deed is not tallying. The property extending 7.48 Ares equivalent to 18.500 cents comprised in old survey No. 442/6 was given to respondent herein by the father of the petitioner. It is to be noted that Ext. B1 to B3 are based on old survey. Hence, prima facie I am of the view that the contention of the respondent that the portion of the property belongs to respondent is included in the description of plaint schedule has got some due force.

15. In order to counter the same petitioner is contending that the respondent sold some extent of properties by virtue of Exts. A7 to A12 documents. Ext. A7 to A12 documents were executed by respondent in favour of different persons. Now, the respondent is in possession of only 7.520 cents. In Ext. A7 to A10 documents the old survey number is shown as 443/1. In Ext. A11 document the corresponding old survey number is shown as 442/14. In Ext. A12 document the old survey number is shown as 442/14 and 443/1. From the

documents itself it can be seen that the respondent sold properties comprised in the above mentioned old survey numbers by virtue of above said deeds. Hence, prima facie I am of the view that the contention of the petitioner is that respondent is only in possession of 7.520 cents has no due force.

16. The specific case of respondent/defendant is that by suppressing the judgment and decree in O.S 91/2012 and the pendency of E.P 19/2020 the petitioner approached the court with the suit as well as the petition. It is true that petitioner is not a party to O.S 91/2012 and E.P 19/2020. On going through the counter filed to I.A 05/2020 it can be seen that petitioner had knowledge about the pendency of the suit and withdrawal of the appeal preferred against Exts. B4 and B5 judgment and decree. In the counter to I.A No. 05/2020 the petitioner/plaintiff would contend that his father withdrawn A.S No. 79/2015 with liberty to file fresh suit. But, Ext. B6 judgment of the Hon'ble Sub Court, Perumbavoor would go to show that the appeal is dismissed as withdrawn. If that be so, the contention of the respondent that the petitioner approached the court by suppressing the material facts has got some due force. Hence, from the above discussed facts and evidence adduced from either side, I am of the view that the petitioner/plaintiff in I.A No. 01/2020 is failed to establish a prima facie case and balance of convenience is in favour of him and the petition is liable to be dismissed by vacating the ad-interim order passed on 26/08/2020.

17. As per I.A No. 05/2020 the respondent would contend that she is entitled to get an interim injunction order with respect to petition schedule property restraining the respondent/plaintiff and his men from trespassing on the petition schedule property, causing obstruction to the petitioner/defendant in cultivating therein and causing any obstruction to the enjoyment of the same by the petitioner/defendant till the disposal of the suit. But, on going through the

petition itself it can be seen that the contention of the respondent/defendant is that she has filed execution petition before this court as E.P 19/2020 for executing Ext. B5 decree in accordance with plan appended along with the same. On going through Ext. C1(a) report the Advocate commissioner reported that there is no specific boundary separating the property of the petitioner and respondent. Further, the Advocate commissioner reported that she saw boundary stones fixed on two spots on the northern side boundary of the plaint schedule property and she noted the those spots in Ext. C1(a) rough sketch. Hence, I am of the view that the injunction sought for by the respondent/defendant in I.A No. 05/2020 cannot be allowed. From the rival contentions it can be seen that parties are at disputed with respect to the extent of the plaint schedule property and the petition schedule property in I.A No. 05/2020. The said fact can only be decided after taking evidence and that is not possible during this stage. Hence, I am of the view that directing both sides to maintain the status quo of the northern side boundary of plaint schedule property as reported by the Advocate commissioner in Ext. C1 report and C1(a) rough sketch is desirable. These points are accordingly answered as above.

18. **Point No. 7:-** Considering the facts and circumstances of the case and also the relationship between the parties, I am not inclined to allow the costs of the proceedings.

19. In the result, both petitions are disposed of as follows:-

I.A No. 01/2020 is dismissed and the interim injunction order passed on 26.08.2020 is vacated. I.A No. 05/2020 is disposed of directing both sides to maintain the status quo of the northern side boundary of the plaint schedule property separating with the petition schedule property as reported by

the Advocate commissioner in Ext. C1 report till the disposal of the suit. No order as to costs. It is made clear that this order will not in any way affect the proceedings in E.P 19/2020.

Dictated to the confdl.asstt., transcribed and typed by her, corrected and pronounced by me in open court on this the 08th day of January, 2021.

Sd/-
ATHEEK RAHMAN
MUNSIFF

Appendix:

Petitioners' Exhibits :-

- | | | | |
|----|---|------------|---|
| A1 | - | 28/03/2005 | - Photocopy of the sale deed No. 2728/2005 of the Sub Registrar Office, Perumbavoor |
| A2 | - | 30/01/2016 | - Photocopy of possession certificate issued from the Arackappady Village Office. |
| A3 | - | 13/01/2016 | - Photocopy of the location sketch of the plaint schedule property |
| A4 | - | 04/06/2020 | - Photocopy of the land tax receipt issued from Arackappady Village Office |
| A5 | - | 03/06/2020 | - Photocopy of the land tax receipt issued from the Arackappady Village Office |
| A6 | - | 31/05/1979 | - Photocopy of exchange deed No. 2817/1979 of the Sub Registrar Office, Perumbavoor |
| A7 | - | 16/10/2004 | - Photocopy of the settlement deed No. 5666/I/2004 of the Sub Registrar Office, Perumbavoor |

A8	-	16/10/2004	- Photocopy of the sale deed No. 5667/I/2004 of the Sub Registrar Office, Perumbavoor
A9	-	30/06/1994	- Photocopy of the sale deed No. 2969/1994 of the Sub Registrar Office, Perumbavoor
A10	-	14/11/1991	- Photocopy of the sale deed No. 3855/1991 of the Sub Registrar Office, Perumbavoor
A11	-	14/01/1999	- Photocopy of the sale deed No. 213/1999 of the Sub Registrar Office, Perumbavoor
A12	-	25/03/1999	- Photocopy of the sale deed No. 1367/1999 of the Sub Registrar Office, Perumbavoor
A13	-	-	- Copy of land register, re-survey plan and Fair area list issued from the Assistant Director of Survey and land records, Central Survey Office, Thiruvananthapuram.

Respondents' Exhibits :-

B1	-	18/02/1957	- Copy of sale deed No. 645/1957 of the Sub Registrar Office, Perumbavoor.
B2	-	31/05/1979	- Copy of exchange deed No. 2817/1979 of the Sub Registrar Office, Perumbavoor.
B3	-	16/05/1975	- Copy of settlement deed No. 2527/1975 of the Sub Registrar Office, Perumbavoor.
B4	-	30/01/2015	- Copy of judgment in O.S. No. 91/2012 of the Munsiffs Court, Perumbavoor
B5	-	30/01/2015	- Copy of Decree in O.S. No. 91/2012 of the Munsiffs Court, Perumbavoor
B6	-	-	- Copy of the commission report and plan in OS. No. 91/2012 of the Munsiffs Court, Perumbavoor
B7	-	30/11/2016	- Copy of judgment in O.S. No. 79/2015 of the Munsiffs Court, Perumbavoor

B8 - 06/05/2020 - Photocopy of the tax receipt issued from the Village Office, Arackappady.

Court Exhibits :-

C1 and C1(a) - 09/11/2020 - Commission report and rough sketch filed by Advocate Commissioner Smt. Najma T. Rasheed

Witnesses for both sides :- Nil

// True Copy //

Id/-
Munsiff
(By Order)

Junior Superintendent

Jb/-
Compd.by :

Copy of Common Order in
I.A. 1/2020 and 5/2020
in O.S. 329/2020
Dated :08/01/2021