

IN THE COURT OF THE MUNSIF, PERUMBAVOOR

Present:- Smt. Alshari A., Civil Judge (Junior Division)
Friday, the 1st day of November, 2024/ 10th Karthika 1946

IA No. 01/2021

in

OS.314/2021

Petitioners/Plaintiffs:-

1. Reji Thomas, Aged 49 years, S/o. Thomas, Aarthunkal House, Trikkalathoor Kara, Airapuram Village, Kunnathunadu Taluk.
2. Blesson, Aged 15 years (Minor), S/o. Reji Thomas, Aarthunkal House, Trikkalathoor Kara, Airapuram Village, Kunnathunadu Taluk. Represented by his Father, Guardian and Next friend Reji Thomas.

By Adv. Hazeem Khan

Respondents/Defendants:-

1. Aliyamma Thambi, Aged 69 years, W/o.Thambi, Vengassery House, Thrikkalathoor Kara, Airapuram Village, Kunnathunadu Taluk.
2. Anoop Thambi, Aged 35 years, S/o. Thambi, Vengassery House, Thrikkalathoor Kara, Airapuram Village, Kunnathunadu Taluk.
3. Sneha Anoop, Aged 28 years, W/o. Anoop Thambi, Vengassery House, Thrikkalathoor Kara, Airapuram Village, Kunnathunadu Taluk.
4. George, Aged 88 years, S/o. Paulose, Vengassery House, Keezhillam Kara, Airapuram Village, Kunnathunadu Taluk.

By Adv. P T Geevarghese

This petition having been finally heard before me on 17/10/2024 and the court on 01/11/2024 passed the following:-

O R D E R

IA No. 01/2021 in OS. 314/2021

1. Petition averments in brief:- Plaint A schedule belonged to the plaintiffs, by virtue of document bearing No. 5793/2008. Plaint B schedule belonged to the 2nd defendant, by virtue of document bearing No. 2679/2011. Plaint C schedule is being used to have access to plaint A and B schedule properties. Petitioner's father had alienated the property with a width of 15 links and a length of 397 links in favour of defendants' father, Poulouse, by virtue of document bearing No.1810/1972. The property was purchased by the defendants' father, as a way to their property. While alienating the property, the property with a width of 20 links in width and 92 links in length on the western end was left remaining with the petitioners' father, subsequently devolved upon these petitioners, on the demise of their father. C schedule way was formed by joining the properties, covered by document bearing No. 1810/1972 and a portion of property covered by the document bearing No. 5793/2008. Plaint C schedule way is having a bell-mouth with a width of 18 feet and a way is proceeding with a width of 12 feet. Plaint C schedule way was formed, by the petitioner along with the predecessor of respondents 1 to 3 and also along with the 4th respondent. Plaint C schedule was formed by relinquishing a portion of plaint A schedule and also by including the property left remaining with the father of the plaintiffs, while he executed the document bearing No. 1810/72, in favour of the defendants father.
2. After widening the way, the C schedule way was demarcated with the granite stone constructions, from plaint A schedule property, by the petitioners. On widening the way, the petitioners and the respondents' predecessor, Thambi and the 4th respondent agreed to use the same, by permitting each other, to use the way. Openings were made on the A schedule to have access to C schedule. The respondents are well aware of the decisions taken, when the

way was widened. Petitioners, 2nd defendant and his brother Bijoy Thambi had supported, to fix get at the western end of plaint C schedule way. On 21.01.2021, the respondents had started to obstruct the use of plaint C schedule way. Respondents have no right to obstruct the use of C schedule way by the petitioners. Plaint C schedule way was being used peacefully, without obstruction, as of right, from the year of 2011 onwards. By the obstruction of the C schedule, the petitioners are facing difficulty, in running the farm that situate in plaint B schedule property and the respondents are to be restrained from using plaint C schedule way, by the petitioners. There is a prima facie case in favour of the petitioners. The question of balance of convenience and the irreparable injury also is in favour of the petitioners. Hence, the petition.

3. Respondents had filed counter statement by denying the petition averments. The petition is not maintainable either in law or on facts and, there is no prima facie case in favour of the petitioners. The descriptions of plaint A, B scheduled properties are false and fabricated. The right claimed by the petitioners or the C schedule way is incorrect. The predecessor of the respondents namely, Poulouse was having property with an extent of 2 acres and 33 cents. To have a way to the said property, their predecessor Poulouse had purchased the property with a length of 397 links and a width of 15 links, by virtue of document bearing No. 1810/1972. Petitioners' father had alienated the property by assigning all the rights, that he had upon the property. Plaint A schedule property is having its western boundary, as a tar road. 1st plaintiff have no necessity to use the way, to reach plaint A schedule property. He is having direct access from the road to the plaint A schedule property.

4. As per the recitals in the document bearing No. 5793/2008, there is a stipulation to form a way, with a width of 5 meters to reach plot B schedule, through the southern side of the 1st plaintiff's property, covered by the document bearing No. 5793/2008. 1st plaintiff approached the defendant, with an intention to sell the property of the 2nd plaintiff, but the defendants were not amenable, for the same. Thereby, the petitioners are having enmity towards the respondents. Item No.1 of the counter claim scheduled way was obstructed by the 1st plaintiff, by loading granite stones. The petitioners had also locked the gate, fixed by the 1st defendant's husband at western end of the way. Petitioners had also destroyed the gate by using lorry. The bell-mouth retained, while assigning the way portion by virtue of document bearing No. 1810/1972, was lost in the Panchayat way, when the same was widened. When the 1st plaintiff had taken lorry unauthorisedly through the way, the southern side construction made on the counter claim scheduled way, was demolished and thereby, the respondents had sustained a loss to the tune of Rs. 40,000/-. Petitioners are not having any right, over the way. There is no prima facie case in favour of the petitioners. If, the way is being used for taking heavy vehicles, it will become useless, which will affect the defendants adversely in using the way. Hence, the petition is to be dismissed.
5. From the above rival contentions, the following points are settled for consideration:-
1. Have the petitioners made out a prima facie case?
 2. Is the balance of convenience in favour of the petitioners?
 3. Will the petitioners be put to irreparable loss and injuries in the event of not granting the interim prohibitory injunction order?

4. Order as to costs?

6. Heard both sides. From the side of petitioners, Ext. A1 to A7 documents were marked. From the side of respondents, Ext. B1 to B26 documents were marked. Ext. C1, C1(a) and C2, C2(a) documents were also marked.
7. **Point Nos. 1 to 3:-** According to petitioners, they are having the right to use C schedule way to have access to plaint A and B schedule properties. The property with a width of 15 links and a length of 397, links was assigned in favour of the respondents' father, in order to have a way to their properties. According to the petitioners, C schedule way includes the property assigned, as way as per document bearing No. 1810/1972 and some portion of property, that is included in plaint A schedule. The C schedule way includes the property, left remaining with the father of the petitioners with a width of 20 links and a length of 19 links, when he assigned the property by virtue of document bearing No. 1810/1972 in favour of the respondents' father. So, as per the case of the petitioners, the C schedule way was formed or the existing way covered by the document bearing No. 1810/1972 was widened by annexing a portion of property from plaint A schedule. On widening the way, they had entered into arrangement and permitted each other, to use the same. On the other hand, the respondents are contending that, the C schedule way exclusively belongs to them, by virtue of document bearing No. 1810/1972 and the petitioners have no manner of right to use the way.
8. According to the respondents, as per the recitals in document bearing No. 5793/2008, a way is stipulated with a width of 5 meters, to have access to plaint B schedule. If the C schedule way was in existence at the time of the execution of the partition deed bearing No. 5793/2008, then there was no purpose to set apart any way to plaint B schedule property, on execution of

that document. So, according to the respondents, the C schedule way exclusively belongs to them and the petitioners have no manner of right over the C schedule way. At the same time, from the contentions of the respondents, it can be seen that, the existence of C schedule way is an admitted fact. According to the respondents, a way is set apart with a width of 5 meters on the southern side of the property, that belonged to the 1st plaintiff, to enter into plaint B schedule as per the recitals in document bearing No. 5793/2008. The property which was so set apart to the share of Kunjamma as per the document bearing No. 5793/2008 was subsequently assigned in favour of the 2nd plaintiff, by virtue of document bearing No. 2679/2011. When there is a way in existence, as claimed by, then there is no circumstances to set apart a way to reach plaint B schedule as per the recitals in partition deed bearing No. 5793/2008. So, the respondents are contending that, even though there is a way in existence as C schedule, the petitioners have no manner of right to use the same and there is a way stipulated as per the partition deed bearing No. 5793/2008 and thereby, the petitioners have no prima facie case in their favour.

9. The document bearing No. 5793/2008 is produced and marked as Ext. A1 for the purpose of this petition. On going through the recitals in Ext. A1, a way with a width of 5 meters is stipulated, commencing from the road on the western side proceeding towards east, further proceeding through the southern side of plaint B schedule, ends at the D schedule item No. 1. As per Ext. A1 document, the said way with a width of 5 meters was in existence and the Kunjamma in whose favour the B schedule of the document was set apart to, was having the right to use the way, to reach the schedule B of the document. The property which is lying on the southern side of the B schedule

of the Ext. A1 document, is the A schedule to the document, set apart to the share of Fr. Lalu Thomas. As per the recitals in Ext. A1, the 5 meter width way is recited to be on the southern side of the plaintiff B schedule, that is the A schedule to the document that was set apart to the share of Fr. Lalu Thomas. The property set apart to the share of the 1st petitioner is the B schedule to the Ext. A1 document and D schedule was set apart to the share of the Kunjamma. As per the B schedule of Ext. A1, the D schedule set apart to the share of Kunjamma is on the eastern boundary. So, as per the stipulations in Ext. A1, a way with a width of 5 meters is recited to be on the southern side of the B schedule to the document set apart to the share of the 1st plaintiff herein. The document was executed in the year of 2008 and the case of the plaintiffs is that, the C schedule way was so formed and widened and an arrangement was agreed in between the plaintiffs and defendants, to use the way, by permitting to use the same each other.

10. Whether the plaintiff C schedule way includes the property of petitioners or does the petitioners and respondents had entered into agreement or arrangement in between them, on widening the way etc are the matters of adjudication. It is true that, a way is stipulated through the plaintiff A schedule property herein, as per the recitals in Ext. A1 document. Even that be so, the petitioners herein are claiming an entirely different right upon C schedule way to that of one covered by Ext. A1 document. The defendants have no case that, the C schedule way is the way which is recited in Ext. A1 document. So, the petitioner herein is seeking a relief upon a way, that is absolutely different, to that of one that is recited in Ext. A1 document. To see that the way stipulated in Ext. A1 document presupposes the existence of way through plaintiff A schedule property and the possibility of not claiming

any or forming any way as described in plaint C schedule, requires evidence and which is a matter of adjudication in the suit.

11. The commissioner who had inspected the property had filed commission report along with rough sketch submitted in O.S 314/21, which is marked as Ext. C2 and C2(a). The commissioner had noted the C schedule way, that reaches plaint B schedule. The commissioner had reported that, the C schedule way is lying demarcated with boundaries from plaint A schedule. As per the report, the defendants had informed the commissioner, regarding the use of way, by the 1st plaintiff to enter into plaint B schedule. It was also reported that, there are no other ways available to enter into plaint B schedule, other than the plaint C schedule. The commission report and rough sketch submitted in O.S 313/21, which is marked as Ext. C1 and C1(a), wherein also the commissioner had reported that, the petitioners in this I.A are using the C schedule way to have access to plaint B schedule property. As per the case of the respondents also, the petitioners had taken heavy vehicles like lorry through the disputed way and thereby, the southern side of the way was demolished and sustained a loss of Rs. 40,000/-, to restore to the earlier positions. The commissioner as per Ext. C1, C1(a) and C2, C2(a) had reported the C schedule way being maintained by making constructions in the granite stones on its southern side. The damage caused in the way also was noted by the commissioner as per Ext. C1, C1(a) and C2, C2(a).
12. The respondents in this case, the plaintiffs in O.S 314/21 had informed the commissioner regarding the use of the way by both the petitioners and the respondents. So, the use of C schedule way by the petitioners is admitted and it is report in Ext. C1, C1(a) and C2, C2(a). The commission reports marked as Ext. C1, C1(a) and C2, C2(a) also would go to show that, there is no other

way in existence, to have access to plaint B schedule, other than plaint C schedule. So, when the use of plaint C schedule is admitted and when there is no other way of access to plaint B schedule and when the existence of C schedule is admitted, then it can only be seen that the petitioners are having a strong prima facie case in their favour. From the commission reports, it can be seen that there is no other way of access to reach the plaint B schedule. If, the suit is decided in favour of the petitioners, and if the injunction is not allowed, especially, when there is no other way of access to plaint B schedule other than plaint C schedule, then, I am of the view that the question of balance of convenience and irreparable injury is in favour of the petitioners herein. It is true that, the damage caused to the plaint C schedule way portion as reported in Ext. C2 and C2(a). Also, it is pertinent to note that the way is being maintained with granite stone constructions to avoid debris of the southern side of plaint C schedule. When the petitioners are found to be having a prima facie case, the question of balance of convenience and the irreparable injury is also in favour of the petitioners, then I could only find that the petitioners are entitled for the relief of temporary injunction as prayed for.

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

14. **In the result,** the petition stands allowed as follows:-

The respondents or their men are restrained from obstructing the transportation through plaint C schedule to reach plaint A and B schedule properties, till the disposal of the suit.

Dictated to the confdl.asstt., transcribed and typed by her, corrected and pronounced by me in open court on this the 1st day of November, 2024.

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

Appendix:-

Petitioner's Exhibits :-

- A1 - 14/07/2008 - Copy of Partition Deed No. 5793/2008 of SRO, Puthencruz.
- A2 - 25/05/2011 - Copy of Settlement Deed No.2679/2011 of SRO, Puthencruz.
- A3 - 29/07/1972 - Copy of Sale Deed No.1810/1972 of SRO, Puthencruz.
- A4 - 02/08/2021 - Tax receipt of Thandaper No.1436 of Irapuram Village.
- A5 - 02/08/2021 - Tax receipt of Thandaper No.2048 of Irapuram Village.
- A6 - - - Copy of plaint in OS.247/21 of Munsiff Court, Perumbavoor submitted on 01/12/2021.
- A7 - 11/10/2021 - Copy of Commission report in OS.247/2021 of Munsiff Court, Perumbavoor.

Respondent's Exhibits :-

- B1 - 29/07/1972 - Certified copy of Sale Deed No.1810/1972 of SRO, Puthencruz.
- B2 - 19/12/1986 - Certified copy of Settlement Deed No.4699/1986 of SRO, Puthencruz.
- B3 - 19/12/1986 - Certified copy of Settlement Deed No.4700/1986 of SRO, Puthencruz.
- B4 - 26/10/2015 - Copy of General Power of Attorney Deed.

- B5 - 14/07/2008 - Certified copy of Partition Deed No.5793/2008 of SRO, Puthencruz.
- B6 - 25/05/2011 - Certified copy of Settlement deed No.2679/2011 of SRO, Puthencruz.
- B7 - 22/11/2021 - Copy of the Acknowledgement receipt of petition from Kunnathunadu Police Station.
- B8 - 23/11/2021 - Copy of the Acknowledgement receipt of petition from Kunnathunadu Police Station.
- B9 - 24/11/2021 - Copy of the Acknowledgement receipt of petition from Kunnathunadu Police Station.
- B10 - 10/11/2021 - Receipt of payment from K K Aliyamma.
- B11 - 20/11/2021 - Receipt of payment from K K Aliyamma.
- B12 - 13/11/2021 - Receipt of payment from K K Aliyamma.
- B13 - 05/11/2021 - Tax invoice No.199 of Chakkungal Metal House
- B14 - 08/11/2021 - Tax invoice No.201 of Chakkungal Metal House
- B15 - 30/10/2021 - Tax invoice No.C861 of Modern Cemento Bricks
- B16 - 20/11/2021 - Tax invoice No.4421 of Kerala Steels
- B17 - - - Certified coy of plaint in OS.406/2013 of Munsiff Court, Perumbavoor submitted on 15/12/2021
- B18 - 18/06/2015 - Certified copy of Commission Report in OS.406/2013 of Munsiff Court, Perumbavoor.
- B19 - 28/11/2015 - Certified copy of the Judgment in OS.406/2013 of Munsiff Court, Perumbavoor.
- B20 - - - Certified copy of Plaint in OS.247/2021 of Munsiff Court, Perumbavoor submitted on 15/12/2021.
- B21 - - - Certified copy of the injunction petition in OS.247/2021 of Munsiff Court, Perumbavoor

submitted on 15/12/2021.

- B22 - - - Certified copy of Injunction schedule in OS.247/2021 of Munsiff Court, Perumbavoor submitted on 01/10/2021.
- B23 - 11/10/2021 - Certified copy of Commission report in OS.247/2021 of Munsiff Court, Perumbavoor.
- B24 - 02/08/2021 - Certified copy of the Land Tax receipt of Irapuram Village.
- B25 - 29/07/1972 - Certified copy of the Sale Deed No. 1810/1972 of SRO, Puthencruz.
- B26 - 14/07/2008 - Certified copy of the Partition Deed No. 5793/2008 of SRO, Puthencruz.

Court Exhibits :-

- C1, - 09/12/2021 - Commission Report and Rough sketch submitted
C1(a) by Advocate Commissioner P. R. Sreedevi in IA.02/2021 in OS.313/2021.
- C1, - 09/12/2021 - Commission Report and Rough sketch submitted
C1(a) by Advocate Commissioner P. R. Sreedevi in IA.02/2021 in OS.314/2021.

Witnesses Exhibits: Nil

Petitioner's Witnesses :-Nil

Respondent's Witnesses :- Nil

Court Witnesses :-Nil

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

// True Copy //

Sd/-
Junior Superintendent

Typed by: jav
Compd by :

Copy of Order
in
IA.01/2021 in
O.S. 314/2021
Dated : 01/11/2024