

**IN THE COURT OF THE MUNSIF, PERUMBAVOOR**

Present:- Sri. Atheek Rahman, B.A., LL.B., Munsiff

Tuesday the 9<sup>th</sup> day of June 2020/ 19<sup>th</sup> Jyaishta, 1942

**O.S. No. 347/2018**

**Plaintiffs:-**

1. Joy, aged 71 years, S/o Joseph, Manelil House, Pulluvazhy Kara, Rayamangalam Village, Kunnathunadu Taluk.
2. Joseph, aged 65 years, S/o Joseph, Manelil House, Pulluvazhy Kara, Rayamangalam Village, Kunnathunadu Taluk.

By Advs. M/s. K.M. Alias and P.V. Shiji

**Defendants:-**

1. Varghese @ Kunju, aged about 80 years, S/o Mathulla, Vachery House, Pulluvazhy Kara, Rayamangalam Village, Kunnathunadu Taluk.
2. Eldhose, aged 50 years, S/o Varghese, Vachery House, Pulluvazhy Kara, Rayamangalam Village, Kunnathunadu Taluk.

Exparte

This suit having been finally heard before me on 09/06/2020 and the court on the same day delivered the following:-

## **J U D G M E N T**

1. Suit is for permanent prohibitory injunction.

2. The brief averments in the plaint are as follows:- Plaintiffs are brothers. 2<sup>nd</sup> defendant is the son of 1<sup>st</sup> defendant. Item No. 1 and 2 properties of plaint A schedule belongs to 1<sup>st</sup> plaintiff by virtue of partition deed No. 1388/2006 of SRO Kurumpady. 1<sup>st</sup> plaintiff is residing in the house situated in item No. 1 of plaint A schedule property. Plaintiff planted rubber trees in item No. 2 of plaint A schedule. Plaint B schedule property belongs to 2<sup>nd</sup> plaintiff by virtue of the above said partition deed. Rubber and coconut trees are planted in B schedule property. 2<sup>nd</sup> plaintiff is residing 2 kilometers away from the plaint schedule properties. The property of 1<sup>st</sup> defendant comprised in Re-Sy.No.330/10 lies on the northern side of item No. 1 of plaint A schedule property. C schedule way is lies on the western side of the 1<sup>st</sup> defendant's property. B schedule property lies on the western side of C schedule way. There is a public way having approximate width of 7 feet passing through the western side of the defendants property as well as through the eastern side of B schedule property. The said way is using by the plaintiffs for the ingress and egress from the plaint schedule property to the Panachikkadu paddy field. C schedule way starts from the northern boundary of B schedule property and proceeds towards north and passing through the western side of the defendants property as well as through the eastern side of B schedule property and thereafter terminus at the Periyar Valley Canal bund. Plaintiffs and their predecessors are using C schedule way from time

immemorial. C schedule way has an approximate length of 40 mtrs and width of 7 feet. The canal was constructed during the period 1960-70 crossing the way and thereby the way was divided into two parts. The portion of the way proceeds from the canal bund towards west is specifically shown in the resurvey plan. After construction of the Periyar valley canal defendants have no much use of C schedule way. But, C schedule way is necessary for the purpose of enjoyment of plaint A schedule properties. When the canal was constructed C schedule way was not shown in the resurvey plan. The C schedule way terminus at the canal bund and the plaintiffs are using the canal bund towards north for conveyance. Item No. 2 of plaint A schedule property lies on the western side of the said bund. Defendants are demanding to gave some portion of item No. 1 of A schedule property for the purpose of widening the bund. They threatened that, if the plaintiffs are not conceded to the demand of the defendants they will close C schedule way. Making use of the situations that C schedule way is not shown in the resurvey plan, defendants are taking hasty steps to close C schedule way. On 08.11.18 when the plaintiffs were cleaning C schedule way, defendants obstructed them by saying that plaintiffs have no right over C schedule way. Further, defendants threatened to annex C schedule way with their property. Following the said incident 2<sup>nd</sup> defendant loadged a false complaint against the plaintiffs. The defendants have no right to close C schedule way or to reduce its width. Hence, the suit for passing a decree of permanent prohibitory injunction restraining the defendants and their men and agents from reducing the width of C schedule way, causing obstruction to the plaintiffs use of plaint

C schedule way, committing any act so as to affect the rights of the plaintiffs over the C schedule way and also committing any act of waste therein.

3. Summons served to the defendants. Defendants entered appearance. But, no written statement seen filed and on 05.07.2019 they were called absent and set ex-parte. Subsequently, case posted for adducing evidence of the plaintiffs.

4. 2<sup>nd</sup> plaintiff gave evidence before the court as PW1. Advocate commissioner was examined as PW2. Exts. A1 to A4 series, C1 and C1(a) were marked.

5. Heard the learned counsel for the plaintiffs.

6. I have gone through the evidence on records. 2<sup>nd</sup> plaintiff has given evidence in tune of the plaint averments. Ext. A1 is the copy of partition deed No. 1388/2006 of SRO Kurumpady in favour of 1<sup>st</sup> plaintiff. Ext. A2 is the land tax receipt in favour of 1<sup>st</sup> plaintiff. Ext. A3 is the land tax receipt in favour of 2<sup>nd</sup> plaintiff. Ext. A4 is the notice dated 09.11.2018 issued from the Rayamangalam Grama Panchayat to 1<sup>st</sup> plaintiff to attend the Adalath will be held on 15.11.2018 and the copy of the petition submitted by 2<sup>nd</sup> defendant against 1<sup>st</sup> plaintiff before the Rayamangalam Grama Panchayat. Ext. C1 is the commission report and C1(a) is the rough sketch. Advocate Commissioner gave evidence as PW2.

PW2 clearly described the lie and nature of C schedule way in his report. PW2 gave evidence before the court that C schedule way is demarcated with the properties on its either side and well identifiable. The defendants have not challenged the above evidence adduced by the plaintiffs. From the unrebutted evidence adduced by the plaintiffs, I hold that the plaintiffs are entitled to get the relief prayed for.

7. In the result, the suit is decreed as follows:-

a) The defendants and their men are restrained from reducing the width of C schedule way, causing obstruction to the user of the C schedule way, committing any act so as to affect the rights of the plaintiffs over the C schedule way and also committing any act of waste therein.

b) Plaintiffs are allowed to realise the costs.

Dictated to the confdl.asstt., transcribed and typed by her, corrected and pronounced by me in open court on this the 09<sup>th</sup> day of June, 2020.

Sd/-  
ATHEEK RAHMAN  
MUNSIFF

### **APPENDIX**

#### **Plaintiff's Exhibits :-**

A1 - 03/05/2006 - Certified copy of partition deed No. 1388/2006 of the Kuruppampady Sub Registrar Office.

- A2 - 05/04/2018 - Land tax receipt issued by the Rayamangalam Village Office.
- A3 - 06/07/2018 - Land tax receipt issued by the Rayamangalam Village Office
- A4 - 09/11/2018 - Notice issued by the Rayamangalam Grama Panchayat to the 1<sup>st</sup> plaintiff
- A4(a) - “ - Copy of the petition submitted by the 2<sup>nd</sup> defendant against the 1<sup>st</sup> plaintiff before the Rayamangalam Grama Panchayat

Defendants' Exhibits :- Nil

Court Exhibits :-

- C1 & C1(a) - 30/11/2018 - Commission report and rough sketch filed by the Advocate Commissioner Sri. A.P. Paul

Plaintiff's Witnesses :-

- PW1 - 14/02/2020 - Joseph M.J.
- PW2 - 04/03/2020 - Adv. A.P. Paul

Defendants' Witnesses :- Nil

// True Copy //

Id/-  
Munsiff  
( By Order )

Junior Superintendent

Jb/-  
Compd.by :

Copy of Judgment  
in O.S. No. 347/2018

Dated: 09/06/2020