

IN THE COURT OF THE MUNSIFF, PERUMBAVOOR

Present:- Sri. Atheek Rahman, Munsiff

Monday, the 1st day of October, 2021/ 10th Karthika, 1943.

IA No. 02/2021 in OS 360/2019

Petitioner/ 10th Defendant:-

Rajappan, Aged 70 years, S/o. Krishnan, Kallarkudy House,
Kavumpuram P O, Koodalappadu Kara, Koovappady Village.

By Adv. T V Eldho

Respondents/Plaintiffs 1 to 9, Defendants 11 to 14:-

1. Kuttan, Aged 61 years, S/o. Sankaran, Kallarkutty House,
Koodalappadu Kara, Koovappady Village, Ernakulam District.
2. Chandran, Aged 63 years, S/o. Sankaran, Kallarkutty House,
Koodalappadu Kara, Koovappady Village.
3. Thankamma, Aged about 60 years, W/o. Parameswaran,
Kallarkutty House, Kavumpuram P O, Aimury Kara,
Koovappady Village.
4. Vanaja Manoj, Aged 49 years, W/o. Manoj, Kallarkutty House,
Kavumpuram P O, Aimury Kara, Koovappady Village.
5. Anandhu Manoj, Aged 19 years, S/o. Manoj, Kallarkutty
House, Kavumpuram P O, Aimury Kara, Koovappady Village.
6. Vanaja, Aged 50 years, D/o. Parameswaran, Kallarkutty House,
Kavumpuram P O, Aimury Kara, Koovappady Village.
7. Shobha, Aged about 46 years, D/o. Parameswaran, Kallarkutty
House, Kavumpuram P O, Aimury Kara, Koovappady Village.
8. Sindhu, Aged 44 years, D/o. Parameswaran, Kallarkutty House,
Kavumpuram P O, Aimury Kara, Koovappady Village.
9. Bindhu, Aged 44 years, D/o. Parameswaran, Kallarkutty
House, Kavumpuram P O, Aimury Kara, Koovappady Village.
10. Ammini, Aged 70 years, W/o. Kunjappan, Velloppattil House,
Aimury Kara, Koovappady Village.

11. Balan, Aged 48 years, S/o. Krishnan, Kallarkutty House, Kavumpuram P O, Aimury Kara, Koovappady Village.
12. Ammini, Aged 68 years, W/o. Kuttan, Panedathu Parambu House, Mattoor Kara, Mattoor Village.
13. Vijayamma, Aged 58 years, W/o. Sasikumar, Aalukkal House, residing at Ottamaram Kara, Koodikkil House, Kanjirappilly Taluk, Kottayam District.

By Advs. Ciju I S and Sonnet Paul

This petition having been finally heard on 20/10/2021 and the court on 01/11/2021 passed the following:-

ORDER

1. This petition is filed by the petitioner/ 10th defendant u/s. 151 of CPC. The petition is supported by an affidavit sworn by the petitioner.
2. Brief averments in the affidavit are as follows:- Petitioner is residing in the house situated in the plaint schedule property. On the western side of the plaint schedule property a mango tree and southern side of the plaint schedule property a banyan tree, a wild jack tree and three jack trees are standing near to the boundaries. That apart, near to the western side of plaint schedule property a jack tree, three coconut trees and a mango tree are standing. Further, a wild jack tree and mango tree are standing in the middle of the plaint schedule property near to the house situated therein. The above trees are aged more than 30 years. The trees standing near to the boundaries are causing nuisance and threat to the house situated in the neighbouring properties belongs to George and Rajan John. Further, the other standing trees are causing nuisance and threat to the house situated in the plaint schedule property. If the branches fall down there is every chance of casualty. Recently, a banyan tree fell down in the plaint schedule property. In the said circumstances, Sanil E.S, the Panchayat ward member of the

Okkal Grama Panchayat filed an application before the RDO, Muvattupuzha for issuing direction to petitioner to cut and remove the standing trees which are causing as nuisance and threat to the neighbouring properties. The reply issued by the RDO filed along with the petition. Hence, it is highly necessary to cut and remove the branches of the trees.

3. Brief averments in the objection filed by 1st respondent/plaintiff are as follows:- The petition is not maintainable either in law or on facts. There is no bonafides in the petition. Suit is filed for partition of the plaint schedule property by metes and bounds and for a decree of permanent prohibitory injunction restraining the defendants from alienating the plaint schedule property, and cutting and removing the trees standing therein. Petitioner filed the petition to cut and remove the branches of the trees standing in the property in possession of the respondent. The said property is not in the exclusive possession of the respondent as alleged. The property is jointly possessing by the plaintiff and defendants. That apart, the trees mentioned in the petition are not standing as a threat or causing nuisance to the neighbouring land owner as averred in the petition. In order to substantiate the contention of the petitioner, no document produced. Petitioner did not take any commission for local inspection to substantiate his contention. The petition is filed with an ill motive to cut and remove the valuable trees standing in the plaint schedule property. Hence, 1st respondent prayed to dismiss the petition with costs.
4. Except R1, R13 and R14 other respondents are exparte. R13 and R14 did not file any objection to the petition.
5. Both sides were heard. From the side of petitioner Ext. A1 and A2 series documents were marked.
6. Form the rival contentions the following point raised for consideration:-

Is there any ground in existence warranting to allow the petition?

7. **The point**:- I have perused the averments in the affidavit in support of the petition as well as the documents. Ext. A1 is the reply dated 31.05.2021 issued by the RDO, Muvattupuzha and Ext. A2 series are the photographs of the standing trees in the plaint schedule properties. The specific contention of the petitioner is that the standing trees included in the list filed along with the petition is causing threat and nuisance to the neighbouring land owners. Further, the petitioner would contend that some of the trees standing near to the house situated in the plaint schedule property are also causing nuisance and threat to the house situated in the plaint schedule property. The standing trees included in the list produced are causing threat to human life. Further, the ward member approached the RDO, Muvattupuzha for issuing direction to the petitioner to cut and remove the branches of the trees. RDO issued Ext. A1 reply stating that the trees are standing in a disputed land involved in a case pending before the court. Hence, he directed the ward member to approach the court concerned.
8. Per contra, respondent would contend that no evidence adduced by petitioner to show that the trees included in the list are standing as threat to human life as averred in the petition. In order to establish the fact no document produced. Further, petitioner did not take any steps to issue a commission for local inspection to brought the alarming situation before the court. According to 1st respondent, under the guise of the petition petitioner is trying to cut and remove the valuable trees from the plaint schedule property.
9. I have gone through the rival contentions and documents produced from the side of petitioner. The suit is filed by 1st respondent for partition by metes and bounds. The temporary injunction application filed by the 1st respondent

for restraining the petitioner from cutting and removing the standing trees from the plaint schedule property and alienating the same till the disposal of the suit is pending and posted along with the suit. Further, the respondent sought for a decree of permanent prohibitory injunction restraining the petitioners from creating any document with respect to the plaint schedule property, inducting strangers therein, and cut and remove the standing trees in the plaint schedule property and causing obstruction to the right of the plaintiff in the plaint schedule property.

10. In the suit, petitioner filed detailed written statement. In that written statement the petitioner is claiming adverse possession over the possessory land of the petitioner. Further, the petitioner would contend in the written statement that another litigation is pending before the court as O.S 606/1997 between the same parties. Moreover, the petitioner denied the relief of partition claimed by 1st respondent. It is to be noted that even though the petitioner would contend that the trees included in the list in the petition is standing as threat to human life and causing nuisance to neighbouring land owners, no commission was taken out to bring the said fact before the court. In Ext. A1 it is not clear that whether RDO mentioned regarding the plaint schedule property in this suit. Ext. A2 series photographs not disputed by the 1st respondent. There is no evidence on record to conclude that the trees included in the list are standing causing nuisance and threat to neighbouring land owners as well as the house situated in the plaint schedule property as alleged in the petition. It is pertinent to note that the suit is filed for partition by metes and bounds of the plaint schedule property. The enquiry before the court is whether the property is partible and in the event of partition what are the shares entitled to by the parties. No interim injunction order is passed in the suit. Hence, I am of the view that the petition is devoid of merit and it is

liable to be dismissed. This point is answered accordingly against the petitioner.

11. In the result, the petition is dismissed. No costs.

Dictated to the confdl.asstt., transcribed and typed by her, corrected and pronounced by me in open court on this the 01st day of November, 2021.

Sd/-
ATHEEK RAHMAN
MUNSIFF

Appendix

Petitioners Exhibits :-

A1 - 31/05/2021 - Reply notice issued from the RDO, Muvattupuzha

A2 - - - Photographs
(series)

Defendants' Exhibits :- Nil

Court Exhibits :- Nil

Witnesses both sides :-Nil

Id/-
Munsiff
(By Order)

// True Copy //

Junior Superintendent

Typed by: jav
Compd.by :

Copy of Common Order
in
IA No. 02/21 in OS 360/19
Dated : 01/11/2021