

IN THE COURT OF THE MUNSIFF, PERUMBAVOOR

Present:- Smt. Alshari A., Munsiff

Saturday, the 4th day of June, 2022/ 14th Jyaishta 1944.

IA No. 5/2022 in OS 339/2021

Applicants/Defendants:-

1. Santhosh Kumar V N, Aged 55 years, S/o. Neelakandan Nair and residing at Vilakkasseriyl House, Thrikkalathoor Kara, Iyrapuram Village, Kunnathunadu Taluk.
2. Dineesh Kumar V N, Aged 53 years, S/o. Neelakandan Nair and residing at Vilakkasseriyl House, Thrikkalathoor Kara, Iyrapuram Village, Kunnathunadu Taluk.
3. Jiby M Kunnappillil, Aged 52 Years, S/o. K M Mathai and residing at Kunnappilly House, Thrikkalathoor Kara, Iyrapuram Village, Kunnathunadu Taluk.

By Adv. Jijo Joseph

Respondent/Plaintiff:-

Rohit Satheesan, Aged 27 years, S/o. Satheesan and residing at Kuruppumkudiyil House, Thrikkalathoor Kara, Iyrapuram Village, Kunnathunadu Taluk.

By Adv. T V Eldho.

This petition having been finally heard on 25/05/2022 and the court on 04/06/2022 passed the following:-

ORDER

1. This is a petition filed for seeking temporary mandatory injunction.
2. Petition averments in brief:- The suit is one filed for permanent prohibitory injunction restraining the defendants and their men from causing any obstruction to the plaintiff B schedule way, from destroying it, from altering the nature and from doing any acts affecting the rights of the plaintiff over

the plaint B schedule way. As per order in I.A 01/21, an order of temporary injunction was passed. An Advocate commissioner visited the plaint schedule properties and filed the report on 07.02.2022. Since, the plaintiff is claiming right of easement by prescription, he is admitting the title of the petitioners over plaint B schedule way. The plaintiff had never obtained any easement by prescription or any other right over plaint B schedule way. Even assuming without admitting, if the plaintiff has any right over the alleged plaint B schedule way, that is only in respect of the way as on the date of the suit which was allegedly used by the plaintiff and nothing more. The commissioner had filed report showing the present lie and nature of the alleged B schedule way on the date of filing the suit. From 20.12.21 onwards, the plaintiff was aware that a lis is pending before this court in respect of the plaint schedule properties. When a lis is pending before the court, both the parties to the suit are bound to maintain the status quo in respect of the property involved in the case which was so held by the Hon'ble High Court of Kerala. On 23.01.2022, the plaintiff and his men destroyed eastern boundary of the alleged plaint B schedule way and forcefully constructed a new entrance to plaint A schedule property from the eastern side of plaint B schedule way by using JCB. The plaintiff increased the width of the present northern entrance to plaint A schedule property from plaint B schedule property. Even though, it was informed to the police, they came to the spot, but no action was taken due to the political influence of the plaintiff. Plaintiff has no right to alter the lie and nature of plaint B schedule way and its boundaries and he has no right to make any new entrance from plaint B schedule way. The highhanded acts done by the plaintiff is an abuse process of law and clear violation of settled legal positions of law. The plaintiff had no manner of right to cut open a new entrance from plaint B schedule property to plaint A schedule property or

increase the width of the entrance. He is under obligation to reinstate the eastern boundary of plaintiff B schedule way and to close the new entrance to plaintiff B schedule way and to close the increased width of the northern entrance. The injury caused to the petitioners cannot be compensated by awarding damages. The petitioners are having a prima facie case and the balance of convenience is in favour of them. Unless the temporary or mandatory injunction as sought for is granted, object of granting injunction would be defeated by delay. Hence, the petition.

3. The respondent had filed counter statement denying the petition averments. The petition is not maintainable. The defendants had no right to file such a petition. The defendants have no right to get an order of injunction against the plaintiff. On the western side of the plaintiff A schedule property, lies the plaintiff B schedule way. The entrance to the plaintiff A schedule property is through the northern side of plaintiff B schedule way. After filing the suit, the construction of house was commenced in plaintiff A schedule property. It was not possible to take the vehicles with building materials through the northern side of plaintiff A schedule property. Plaintiff B schedule way which turns at the eastern side was not possible to be entered to reach plaintiff A schedule property and therefore a temporary opening was made by the plaintiff on the western side of plaintiff A schedule property. No hardships caused to the defendants. The plaintiff had not done any act over the plaintiff B schedule way as stated and it is baseless. No acts were reported to be done upon plaintiff B schedule property by the Advocate commissioner. The plaintiff is having right to enter to plaintiff A schedule property from any side of plaintiff B schedule which cannot be obstructed by the defendants. This petition is intended to be cause obstruction to the construction of house. Petitioners have no prima facie case and balance of

convenience is in favour of the respondent. Hence, the petition is to be dismissed.

4. 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 temporary injunction order?
 4. Order as to costs?
5. Both sides were heard.
6. **Point Nos. 1 to 3:-** For the purpose of convenience and to avoid repetition, these points are considered together. Counsel from the both sides omitted to mark the documents. Hence, the documents are produced and marked for the purpose of considering this I.A. The petitioners had not produced any documents. The documents produced from the side of the respondents as Ext. B1 to B5. The commission report submitted by the Advocate commissioner on 07.02.2022 was marked as Ext. C1 and the rough sketch was as Ext. C1(a). The commission report filed on 08.03.2022 and the rough sketch was marked as Ext. C2 and C2(a).
7. According to the petitioner, the respondent had changed the physical features by destroying the eastern side boundary of plaintiff B schedule way and forcefully constructed a new entrance to plaintiff A schedule property from the eastern side of plaintiff B schedule property by using JCB. The plaintiff had increased the width of the present entrance width of plaintiff A schedule property from plaintiff B schedule property. Plaintiff has no right of alter the lie and

nature of plaint B schedule way and its boundaries and he has no right to make any new entrance from plaint B schedule way. The counsel for the petitioner invited to my attention of the decision of the Hon'ble High Court in **Antony v. Padmavathy Amma** reported in **ILR 2010 (2) Ker. 31**, wherein it was made clear by the Hon'ble High Court that the defendant also seek for an interim mandatory injunction to restore the status quo as on the date of institution of the suit and unilaterally altered by the plaintiff. It is observed by the Hon'ble High Court in the above decision that Except in those cases where the court can take notice of subsequent events and mould the reliefs accordingly, no party to a litigation can be allowed to unilaterally alter the state of affairs occurring at the subject-matter of the suit on the date of institution of the lis to the disadvantage or detriment of the opposite party. In the decision of the Hon'ble High Court in **Jose K.V and Others v. Managing Director and Another** reported in **2012 (3) KHC 682**, it was held that the court has always jurisdiction to pass in a mandatory injunction form and to direct restoration of the status quo ante in the manner and to the extent possible. In the decision of the Hon'ble High Court in **Vasudevan Nair and Another v. Muraleedharan** reported in **2011 (2) KHC 832** it was held that when a lis is pending before the court, both the parties to the suit are bound to maintain the status quo in respect of the property involved in the suit. The counsel for the petitioner had invited my attention of the decision of the Hon'ble High Court in **Sathyabhama Amma v. Vijaya Amma** reported in **1994 (2) KLT 856** and **B.F Varghese v. Joseph Thomas - ILR 1956 TC 869** it was held that the defendant also seek for an interlocutory mandatory injunction which is the settled position of law. It is not in doubt that the defendant is entitled to seek for an interim mandatory injunction to restore the status quo ante as on the date of suit so as to preserve the subject-matter of the suit.

8. As per the case of the respondent/plaintiff, the suit was one filed for restraining the defendant from obstructing or demolishing or changing the physical features of plaintiff B schedule way in a way detrimental to the rights of the plaintiff over the plaintiff B schedule way. So, as per the case of the plaintiff and on the perusal of the averments in the plaint, it can be seen that the subject-matter of the suit is the plaintiff B schedule way. So, the physical features or the status quo of the plaintiff B schedule way has to be maintained as such, in view of the above decisions of the Hon'ble High Court. From Ext. C1 and C1(a) commission report, it can be seen that the plaintiff B schedule way noted by the Advocate commissioner lying on the western side of the plaintiff A schedule property. Again the commissioner had inspected the property and filed a report on 08.03.2022. The 1st inspection was on 20.12.2021. The commissioner noted the width of the plaintiff B schedule way to be 4.10 mtrs varying to 4.20 mtrs, 3.60 mtrs, 3.70 mtrs, 4.60 mtrs, 4.70 mtrs, 4.20 mtrs, 3.90 mtrs, 4.05 mtrs and 4 mtrs at different points were noted and is having 96.80 mtrs in length which is lying as a mud road. It is also noted that plaintiff A schedule property is having on its western and northern boundary as plaintiff B schedule way. The entry to the plaintiff A schedule property is through the northern side. Ext. C1 and C1(a) filed by inspecting the property on the inception of the suit. Subsequently, on 28.02.2022, the commissioner had inspected the property. As per the order in I.A 04/22, the commissioner had noted that the earlier compound wall noted in the earlier commission report was demolished and an entrance is made for transportation of vehicles. The boundary wall existed demarcating the plaintiff B schedule way and plaintiff A schedule property was completely demolished and the portion levelled is having 3 months of oldness. There was a compound wall to demarcate the plaintiff A schedule property which was seen reported to be demolished as per

Ext. C2 and C2(a). There was no entrance through the western corner during the inspection of the property earlier by the Advocate commissioner. It is also noted that, new constructions are going on plaint A schedule property. The petitioner herein had no case that the compound wall existed in between plaint A schedule property and plaint B schedule belonged to the defendant/petitioner.

9. On going through the Ext. C2 and C2(a), it can be seen that the compound wall which was demarcates the property of respondent/plaintiff and the plaint B schedule way belongs to the plaintiff. As per Ext. C2 and C2(a), the changes noted is the demolition of the compound wall which belongs to the plaintiff/respondent. The changes noted in the compound wall of the plaintiff by increasing the width of the entrance by demolishing the compound wall which belongs to the respondent/plaintiff. So, it is very clear from the Ext. C2 and C2(a) that the compound wall which existed during the 1st inspection by the commissioner was demolished by the plaintiff/respondent to increase the width of the entrance from the width of plaint B schedule way. It is true that the entrance to the property of plaintiff/respondent from the plaint B schedule way is changed. From the reliefs sought for in the plaint and the contentions and averments raised by the defendants/petitioner in this petition, it can be seen that the subject matter of the suit is the plaint B schedule way and not the plaint A schedule property or that the disputed property is the plaint B schedule way. On going through the Ext. C2 and C2(a), the changes noted are in plaint A schedule property or rather in the compound wall of the A schedule property. So, the increasing of width of the entrance of plaint A schedule property by demolishing their compound wall cannot be said to have changed the physical features of plaint B schedule way but only the physical features of plaint A schedule property or the compound wall of the plaint A schedule

property. The petitioners have no claim of right over the plaintiff A schedule property. But, they are claiming right over plaintiff B schedule way. The change of physical features noted by the commissioner as per Ext. C2 and C2(a) are upon the plaintiff A schedule property or upon the compound wall of plaintiff A schedule property. Without having any claim of right over the plaintiff A schedule property, the petitioner could not be found to have any personal interest to seek for a temporary mandatory injunction as prayed for herein, since the prayer in the petition is to direct the plaintiff to close the new entrance from the plaintiff B schedule way and to close the increased width of the northern entrance. The prayer sought for is to restore the compound wall by decreasing the width of the entrance to plaintiff A schedule property, that belong to the plaintiff. On going through the Ext. C2 and C2(a), it can be seen that the plaintiff/respondent had demolished the compound wall which belonged to them. The defendants/petitioners have no right to compel the plaintiff to construct their compound wall or the manner in which it is to be constructed and all. So, the temporary injunction sought for upon the property which belongs to the plaintiff upon which the defendants/petitioners have no claim of right over the compound wall belongs to them or any right upon plaintiff A schedule property. The increase in the width of the way by demolishing the compound wall is within the property of plaintiff that is plaintiff A schedule property which is not in dispute or subject matter of the suit herein. So, while considering the prima facie case in the petition, I could not find the petitioner to be having a prima facie since he has no claim of right over plaintiff A schedule property or compound wall and the changes noted by the commissioner as per Ext. C2 and C2(a) are upon the compound wall of plaintiff A schedule property.

10. The respondent had contended that, for the purpose of making construction in the plaint A schedule property, the vehicles could not be taken into plaint A schedule property for which they had increased the entrance, by demolishing the compound wall. The commissioner had noted the construction to be going on the plaint A schedule property as per Ext. C2 and C2(a). So, if the injunction as sought for is allowed definitely it will cause irreparable injury to the respondent, if they succeed in the suit at a later stage after having elaborated trial. On the other hand, by increasing the width of the entrance by demolishing the wall which belongs to the plaintiff, no imminent or hardship or danger to be caused to the petitioner/defendant, if the suit is decided in their favour at a later stage. So, while considering the balance of convenience also, it is in favour of the respondent/plaintiff herein. So, I could not find the prima facie case and balance of convenience of the question of irreparable injury in favour of the defendant/petitioner herein. Hence the petition stands dismissed.

Dictated to the confdl.asstt., transcribed and typed by her, corrected and pronounced by me in open court on this the 4th day of June, 2022.

Sd/-
ALSHARI A.
MUNSIFF

Appendix :-

Petitioners' Exhibits :- Nil

Respondents' Exhibits :-

- | | | | | |
|----|---|------------|---|--|
| B1 | - | 12/08/2021 | - | Copy of settlement deed No.3567/2021 of SRO Puthencruz |
| B2 | - | 04/10/2021 | - | Tax Receipt No.KL07051407149/21 |

- B3 - 29/12/1994 - Copy of Sale deed No.6776/94 of SRO Puthencruz
B4 - 19/11/2021 - Location sketch
B5 - 19/12/2021 - Photographs – 3 Nos.

Court Exhibits :-

- C1 & - 07/02/2022 - Commission Report and Rough Sketch
C1(a) submitted by Adv. Lola Isaac
C2 & - 08/03/2022 - Commission Report and Rough Sketch
C2(a) submitted by Adv. Lola Isaac

Petitioners' Witnesses :-

- PW1 - 23/03/2021 - Seena Sajeevan

Respondent Witness :- Nil

Id/-
Munsiff
(By Order)

// True Copy //

Junior Superintendent

Typed by: jav
Compd.by :

Copy of Order
in
IA No. 05/2022
in OS 339/2021
Dated : 04/06/2022