

IN THE COURT OF MUNSIF, MUVATTUPUZHA

Present:

Sri. Joseph Rajesh K.A., Munsiff.

Tuesday, the 20th day of August, 2019/29th Sravana, 1941

O.S.No.123/2010

- Plaintiffs:**
1. Kuttappan, aged 78 years, S/o.Kunjan, Edasserykudy House, Paipra Kara, Mulavoor Village.
 2. A.K.Prasad, aged 30 years, S/o.Kuttappan,..do...do..

P1 – Died.
By Advocate Abraham Joseph.

Defendant: P.K.Krishnankutty, aged 48 years, S/o.Kela, Edasserykudy House, Paipra Kara, Mulavoor Village.

By Advocates M.Jayalal, P.A.Yoosaf and A.R.Ani.

This suit coming for hearing on 4.7.2019 and on consideration of evidence of PWs 1 to 3, Exts.A1 to A3, B1 & B2 and C1 series and C2 series, the court on 20.8.2019 delivered the following:

JUDGMENT

Suit is one for declaration of title, fixation of boundary and for permanent prohibitory injunction .

2. Averments in the plaint, in brief, are as follows:- First plaintiff is the father of the second plaintiff. Plaint schedule property was obtained by the first plaintiff as per A schedule in partition deed

No.2912/09 of SRO, Muvattupuzha and as per sale deed No.2914/09 of the same SRO executed on the same day. The properties as per the above deeds are having a total extent of 42 cents and are lying within common boundaries as a single contiguous property. Plaintiff schedule property is the family property of the plaintiffs and their predecessors. On the northern side of the plaintiff schedule property, it is the remaining property of the first plaintiff, wherein the plaintiffs are residing. There is a Panchayat road on the southern side of the plaintiff schedule property and there is a way passing through the plaintiff schedule property from the southern Panchayat road leading to the residential plot of the plaintiffs. On the north-eastern side of the plaintiff schedule property, there is a 'serpent kavu', wherein 'serpent pooja' is conducting. There were clear and demarcating boundaries on all the four sides. On the western side of the plaintiff schedule property, it is the property of the defendant. The defendant attempted to destroy the western boundary and attempted to reduce possession of a portion of the plaintiff schedule property. Second plaintiff interfered and aborted the illegal attempts. Defendant disputed the title of the first plaintiff over the plaintiff schedule property and declared that he is not accepting partition deed No.2912/09 and sale deed No.2914/09 of SRO, Muvattupuzha. On 17.03.2010, defendant with his men attempted to take possession of a portion of plaintiff schedule property and partly removed the

demarcating boundary between the plaint schedule property and the defendant's property. Therefore, the first plaintiff's title over the plaint schedule property is to be declared, the western boundary of the plaint schedule property with the defendant is to be fixed and prohibitory injunction against trespass is to be passed and hence, prayed for a decree.

3. Defendant filed written statement contending as follows:- The plaintiffs have neither title to nor possession over the plaint schedule property. The parties to partition deed No.2912/09 and sale deed No.2914/09 of SRO, Muvattupuzha were not having any rights over the plaint schedule property. It is true that A and B schedule properties in the said deeds were originally obtained by Edacherikudiyil Karan and his son Ayyappan. But, the first plaintiff's father Kunjan was not the son of Ayyappan and he had no relation with Ayyappan and Karan. There was no son by name Kunjan for Ayyappan and therefore, neither the plaintiffs nor his siblings obtained any right over the properties of Ayyappan and Karan. The partition deed and sale deed relied on by the plaintiffs are not binding the defendant and the plaint schedule property and deeds are void ab-in-itio. The plaint schedule property along with the property lying on the western side were originally obtained by the defendant as per settlement deed No.2306/1973 executed by his mother Kochukutty. There is no plaint schedule

property in existence separately from the property of the defendant. Defendant is in possession and enjoyment of the entire property covered by settlement deed No.2306/1973 and is improved with agricultural developments. There was no occasion for the defendant to remove the boundaries of the plaint schedule property, since there were no such boundaries demarcating the plaint schedule property. The attempt of the plaintiffs is to obtain possession of the property of the defendant after executing deed Nos.2912 and 2914 of 2009. The defendant in continuation of his predecessors in interest is residing in the plaint schedule property and is conducting an iron forge therein. The place for serpent worship is constructed by the defendant and out of magnanimity, defendant has permitted the plaintiffs to use a way from the southern Panchayat road to their residential building. But, there is no demarcating way through the plaint schedule property and taking advantage of the temporary permission, plaintiffs created documents and are attempting to establish a right over the property. There is no cause of action for the suit and it is liable to be dismissed with costs.

4. On the above pleadings, the following issues were framed:-

- 1) Whether first plaintiff has title over plaint schedule property?
- 2) Whether plaintiffs are entitled for the declaration prayed for?

- 3) Whether plaintiffs are entitled for fixation of eastern boundary of plaint schedule property?
- 4) Whether plaintiffs are entitled for the injunction prayed for?
- 5) Reliefs and costs?

5. Since issue No.3 does not reflect the matter in dispute, it is re-cast as follows:-

Whether plaintiffs are entitled for fixation of western boundary of plaint schedule property?

6. In trial, on the side of the plaintiffs, PWs.1 to 3 were examined. Exts.A1 to A3 documents were marked. On the side of the defendant, no oral evidence is adduced. Exts.B1 and B2 documents were marked. Exts.C1 series and C2 series were also marked.

7. **Issue Nos.1 and 2:-** For brevity and convenience, these issues are considered together. Plaintiff's counsel on 10.06.2019 filed a memo to the effect that the first plaintiff died on 07.07.2015 and therefore, his death is recorded and since the second plaintiff is the only legal representative, no other party was impleaded. Before considering the title of the second plaintiff as per Ext.A1 Will deed, the title claimed by the first plaintiff over the plaint schedule property by virtue of Ext.A2 and Ext.A3 deeds is to be considered. If the first plaintiff has no right in the plaint schedule property, it goes without saying that his bequeath,

if at all proved in terms of Section 63 of the Indian Succession Act r/w Section 68 of the Indian Evidence Act, has no significance.

8. In a suit for declaration of title, the plaintiffs have to prove their title beyond any shadow. The plaintiffs cannot rest their case on the weakness of the defence. It is well settled in law that a partition deed itself is not a deed of title in respect of immovable property, but it can only be referred to and used as to how the right in the property was obtained by the parties to the document. If a party is relying on a partition deed to show his immediate title, he definitely needs to prove the actual title by which the right in the immovable property has been derived by him or by the parties to the deed of partition. Ext.A2 is a partition deed executed in the year 2009. The recitals in Ext.A2 would go to show that the parties thereto by name Kuttappan (first plaintiff herein), Bhavani, Parukutty, Thankamma and Kalyani asserted their co-ownership in respect of A and B schedules to the deed having a total extent of 42 cents in Sy.No.1067/10A by intestate succession by their father Kunjan, who claimed to have obtained the rights in the schedule properties by way of intestate succession from his father Ayyappan, who was a co-owner along with his father Karan as per sale deed No.2380/1094 M.E of SRO, Muvattupuzha. So, the derivation of title to the plaint schedule property claimed in Ext.A2 partition deed is as follows:- One Karan and his son Ayyappan jointly purchased property

as per sale deed No.2380/1094 M.E of SRO, Muvattupuzha. Father of Ayyappan, co-owner of the property died intestate and thereby Ayyappan being the sole son became the title holder of the property as per the said sale deed. While so, by the intestate death of Ayyappan, the rights in the property was devolved on his sole son Kunjan, father of parties to Ext.A2 partition deed and thereby, they become co-owners of the schedule properties. There cannot be any quarrel that A and B schedules in Ext.A2 are described as plaint schedule property herein. It is because as per A schedule in Ext.A2, 39 cents out of 42 cents was set apart to the share of first plaintiff and the remaining 3 cents was set apart to the share of Thankamma, sister of first plaintiff. The said Thankamma, who obtained B schedule in Ext.A2 deed on the same day assigned B schedule to the first plaintiff as per Ext.A3 deed and thereby, it is claimed that the first plaintiff became title holder in respect of the plaint schedule property, which is A and B schedules in Ext.A2 partition deed.

9. Interestingly, the defendant in the written statement has specifically denied that the father of first plaintiff and parties to Ext.A2 deed, Kunjan was not the son of Ayyappan and therefore, Kunjan did not get any right in the property obtained by Ayyappan and Karan as per sale deed No.2380/1094 M.E of SRO, Muvattupuzha. Defendant further set-up an independent title over the plaint schedule property on

the basis of settlement deed No.2306/73 executed by his mother Kochukutty. The above said deed relied on by the defendant is marked in evidence as Ext.B1. The recitals in Ext.B1 would go to show the mother of the defendant claimed that she is the sole child of deceased Ayyappan who died intestate and therefore, obtained the entire rights in the properties of Karan and Ayyappan as per sale deed No.2380/1094 M.E of SRO, Muvattupuzha and in 1973 itself, she settled the property as item No.2 in the second schedule in Ext.B1 deed in favour of the defendant. Item No.2 in the second schedule in Ext.B1 reflects 42 cents of property comprised in Sy.No.1067/10A and it is the same property as described in the plaint schedule. The defendant also obtained properties comprised in Sy.No.1067/17 and 1067/15 as per Ext.B1 deed. So, much prior to Ext.A2, the defendant obtained deed as Ext.B1 showing that he obtained title and possession over plaint schedule property through a deed of settlement executed by his mother claiming title through Karan and Ayyappan. So, a clear case of counter title is set-up by the defendant. The properties as per Ext.B1 and other properties were partitioned as per Ext.B2 deed and the property having an extent of 42 cents comprised in Sy.No.1067/10A is set apart to the defendant herein.

10. Now, I shall consider Ext.C2 series survey commission report and plan prepared in the case. The learned commissioner, PW3, with

the assistance of surveyor identified the plaintiff schedule property as plot A in Ext.C2(a) plan and found that the defendant is having property on the eastern side of the plaintiff schedule property and the said item is shown as B in Ext.C1(a) plan. But, as per survey records, the said plot is within Sy.No.1067/11A, which is not as per the title deed of the defendant. However, the learned commissioner in categorical terms reported that the property as per Ext.B1 settlement deed is the same property shown as plaintiff A schedule property. In other words, the plaintiff schedule property claimed by the first plaintiff on the strength of Exts.A2 and A3 deeds is found to be the second item in second schedule in Ext.B1 settlement deed. When plaintiffs assert title to the plaintiff schedule property and when it is shown that the defendant is also claiming title to the very same property and both parties are claiming rights through the same predecessor-in-interest, plaintiffs cannot get a decree for declaration of title unless it is proved that the property devolved upon the father of parties to Ext.A2 partition deed and not on the mother of the defendant as recited in Ext.B1 settlement deed. Plaintiffs ought to have adduced evidence to substantiate first plaintiff's title over the plaintiff schedule property with clear, plausible and cogent evidence. Plaintiffs failed to prove that the first plaintiff got valid and legal title over the plaintiff schedule property through his father as recited in Ext.A2 partition deed. It follows that the plaintiffs are not

entitled to get a decree of declaration in respect of the title of the first plaintiff over the plaint schedule property.

11. As indicated earlier, there is no meaning in further probing about the title of second plaintiff over the plaint schedule property as per Ext.A1 Will deed. Since plaintiffs failed to prove title of the first plaintiff over the plaint schedule property, second plaintiff, a person claiming through him cannot get any relief. Issue Nos.1 and 2 are accordingly answered.

12. **Issue No.3:-** There is no indication in Ext.C1 series to suggest that there existed a demarcating boundary on the western side of the claimed plaint schedule property with the property in possession of the defendant. The learned commissioner in categorical terms in Ext.C1 series reported that the so-called plaint schedule property and the property in possession of the defendant on further western side are lying contiguously, without any demarcating boundary. I have already found that the plaintiffs failed to prove their title in respect of the plaint schedule property and therefore, the boundary cannot be fixed as prayed for. The removal of boundary and the cause of action seeking fixation of boundary are not made out. Issue No.3 is accordingly answered.

13. **Issue No.4:-** Even though the second plaintiff did not mount the box and deposed about the possession of the plaint schedule

property by him, as already pointed out, there is no demarcating boundary on the western side for the plaint schedule property and it is lying along with the property of the defendant as a single contiguous plot. There is nothing on record to show that the plaintiffs were, and now the second plaintiff, is in exclusive possession of the plaint schedule property and it is an identifiable plot demarcated from the property of the defendant. In such circumstance, no decree for permanent prohibitory injunction could be granted and the cause of action of alleged attempt of trespass is only a pseudo one to suit the ill-founded case of the plaintiffs. Hence, plaintiffs are not entitled to get a decree for permanent prohibitory injunction. Issue No.4 is accordingly answered.

14. **Issue No.5:-** In view of the findings on issue Nos.1 to 4, the suit is only to be dismissed. I feel that the costs of the defendant is to be paid by the second plaintiff.

In the result, the suit is dismissed with costs.

Dictated to the Confidential Asst., transcribed and typewritten by her, corrected and pronounced by me in the open court on this the 20th day of August, 2019.

Sd/-
Joseph Rajesh K.A.
Munsiff.

APPENDIXPlaintiff's Exhibits:

- A1. 11.9.2013 Deed No.204/13 of Muvattupuzha SRO.
 A2. 25.9.2009 Deed No.2912/2009 of Muvattupuzha SRO.
 A3. 25.9.2009 Deed No.2914/2009 of Muvattupuzha SRO.

Defendants' Exhibits:

- B1. 5.9.1973 Certified copy of deed No.2306/1973 of Muvattupuzha SRO.
 B2. 12.12.1988 Certified copy of deed No.2691/88 of Muvattupuzha SRO .

Court Exhibits:

- C1. 3.4.2010 Commission report filed by Advocate commissioner Pravida Gopalan.
 C1(a) ,, Rough sketch
 C2. 30.3.2017 Commission report filed by Advocate commissioner S.Saritha.
 C2(a) ,, Survey plan.

Plaintiff's Witnesses:

- PW1. 20.2.2019 N.R.Anilkumar.
 PW2. 20.2.2019 Advocate Pravida Gopalan.
 PW3. 20.2.2019 Advocate S.Saritha.

Defendants' Witness: NIL.

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Munsiff.

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