

IN THE COURT OF MUNSIFF, MUVATTUPUZHA

Present:

Sri. Joseph Rajesh K.A., Munsiff.

Friday, the 13th day of July, 2018/22nd Ashada 1940

O.S.No.521/2011

Plaintiff: Rajan Kurian, aged 48 years, S/o Kuriakose,
Thevarmadathil House, Mulavoor Kara, East Vazhappilly P.O.,
Mulavoor Village, Muvattupuzha Taluk.

By Advocate Sri. M.Jayalal.

Defendant: Narayanan Nair, aged about 58 years, S/o Raghavan Nair,
Athippillil House, Mulavoor Kara, East Vazhappilly P.O.,
Mulavoor Village, Muvattupuzha Taluk.

Adl. 2. Kamamma Narayanan Nair, aged 54 years,
W/o Narayanan Nair, do, do.

Adl. 3. Swapna Rajesh, aged 33 years, D/o Narayanan Nair, do, do.

Adl. 4. Ravindran Nair, aged 54 years, S/o Raghavan Nair,
Athippillil House, do, do.

(Adl. D2 & D3 impleaded as per order in I.A.3984/11 dated 10.1.2012)

(Adl.D4 impleaded as per order in I.A.1434/12 dated 15.10.2012)

D1 - No more.

Adl. D2 to D4 by Advocate Sri. N.Ramesh.

This suit coming on for final hearing on 29.6.2018 and on consideration of
evidence of PW1, DW1 and DW2 and Exts.A1 to A4, B1 to B5, C1 series and C2
series, the court on 13.7.2018 delivered the following:

JUDGMENT

Suit is one for Permanent Prohibitory Injunction.

2. Averments in the plaint in brief are as follows:-Plaintiff is the absolute
owner in possession and enjoyment of the plaint schedule property which he

obtained as per Deed Nos.4679/1991 and 4839/1997 of SRO, Muvattupuzha. Plaintiff schedule property is well bounded from its adjacent properties with very old boundaries. There is a pond on the south-eastern corner of plaintiff schedule property having an approximate extent of 6 Cents and it also forms part of the plaintiff schedule property. Plaintiff is taking water from the above said pond by regulating a sluice at the north eastern corner of the said pond. The defendants had 29 cents of property at the south eastern side of the plaintiff schedule property and sold considerable extent of it and an extent of 8 cents is now remaining. The pond in the plaintiff schedule property and the property of the defendants is separated by a very old bund on the eastern side of the pond. There is a sluice from the above said pond towards east through which the defendants can take water for agricultural purpose. The defendant's property was originally paddy field and it is converted as a garden land and a house is constructed therein. Therefore, the right of the defendants is only to draw water from the pond for agricultural purpose and has no right or possession over the pond. Defendant in order to grab a portion of the pond into his possession done some work by demolishing eastern bund of the pond but the attempt was made futile by the plaintiff. Defendant is also causing obstructions in operating the sluice to take water from the pond. Defendant has also unloaded soil in his property and began to spread the same on the pond portion and the attempt is to reclaim the pond. On 15.11.2011, defendant threatened that he will not allow the plaintiff to take water from the pond and to enjoy the same. Hence prayed for a decree of

perpetual injunction restraining the defendant and his men from trespassing upon the plaint schedule property, altering its boundaries, lie and nature and from doing any act so as to reduce the pond in the plaint schedule property or part thereon into his possession and also from any act so as to prevent the plaintiff from enjoying the plaint schedule property and the bund therein in any manner he likes.

3. During the pendency of the suit, the original defendant died and additional defendants 2 and 3 were impleaded as legal representatives. They did not file any written statement and the additional 4th defendant was impleaded. Additional 4th defendant filed written statement.

4. The contentions in the written statement of additional 4th defendant in brief are as follows:- Plaintiff did not obtain the entire plaint schedule property as per Deed No.4839/1997. The boundaries shown in the plaint schedule are not correct. There is pond on the south-eastern side of the plaint schedule property but it is not coming within the boundaries of the property and the plaintiff has no title or possession over the pond. There is an old granite boundary separating the same from the property of the plaintiff. The family of the defendant had extensive area of properties near the plaint schedule and were paddy fields. Subsequently, the properties were developed with rubber and other permanent improvements. At the time when the properties were paddy fields, the pond was used for irrigating the same. Till the defendant purchased the property from additional second and third defendants, they were residing in the house in the property and

were using the pond. Defendants 1 to 3 were in possession and enjoyment of the pond and after purchase, fourth defendant is in possession and enjoyment of the pond. The plaintiff's property situates at a height of about six feet from the pond. The pond along with the adjoining property was in the possession and enjoyment of the first defendant which the defendant's father obtained as per Partition Deed No.114/1123 ME of SRO, Muvattupuzha. Subsequently, the said property and other properties were partitioned as per Deed No.395/2000 of SRO, Muvattupuzha and the first defendant obtained the pond in dispute and the adjacent properties by Sale Deed No.398/2000, 4th defendant purchased some property from the first defendant including the pond. There are two coconut trees on the bund of the pond on the side of Mulavoor Thondu road and the defendant is taking yield therein. There is a coconut tree on the north eastern bund portion of the pond and on the northern kayyala of the pond two stones were placed for facilitating drawing of water through the thodu from the pond during summer. Since plaintiff has neither title nor possession over the pond portion he is not entitled to get any relief and prayed for dismissal of the suit with costs.

5. On the above pleadings, following issues were framed:

- 1) Whether the plaintiff is entitled to get a decree of permanent prohibitory injunction ?
- 2) Reliefs and costs.

6. In trial, on the side of the plaintiff, he was examined as PW1. Exts.A1 to A4 documents were marked. On the side of the defendants, the additional 4th

defendant was examined as DW1. One witness was also examined as DW2. Exts.B1 to B5 were marked. Ext.C1 and C2 series were also marked.

7. **Issue No.1**:- The dispute in the suit confines to the pond situated on the south eastern portion of the property of the plaintiff and on the western side of the property now owned by the additional 4th defendant.

8. In a suit for injunction simplicitor, this court need not delve deep or conduct an exhaustive and comprehensive enquiry as to the title of the property as the question to be decided is who is in possession of the property.

9. PW1 filed affidavit in lieu of examination in chief in tune with the averments in the plaint. According to the plaintiff, the pond situates on the eastern portion of the plaint schedule property is coming within the boundaries of the plaint schedule property and demarcated from the adjacent properties. In order to substantiate the claim of possession based on his title documents, it is contended that the property claimed to have been obtained by the additional 4th defendant does not include the pond portion as it is not coming within the survey number covered by Exts.B1 to B4 documents. I shall first consider about the physical boundaries of the plaint schedule property to find out whether the plaint schedule property including the pond portion on its south eastern side is well identifiable and demarcated from the property of the 4th defendant. Ext.C1 series were prepared by the Advocate Commissioner after inspection of the plaint schedule property on 16.11.2011 (the date of suit) and he reported that the plaint schedule property is well demarcated and separated with physical

boundaries on all the four sides. The property of the defendant lying on the eastern side of the pond was found separated with soil bund. It is important to note that on the southern side of the garden land portion in the plaint schedule property, there are steps towards south to reach the pond lying on the extreme southern portion. The southern boundary of the pond is well constructed with granite wall separating it from the PWD road lying on further south of it. The western side of the pond and the remaining portion of the plaint schedule property on the western side is well demarcated from the road on the western side ie., Nirappu-Aattayam road. On the north of the plaint schedule property, it is well bounded with Kallu Kayyala and on the eastern side as well till the north-eastern corner of the pond, the plaint schedule property is bounded with Kayyala. So, the Commission Report would clearly indicate that the plaint schedule property is coming within common boundaries and is well demarcated from the adjacent properties with clear and definite boundaries. It is admitted by the plaintiff in the plaint itself that from the pond there is a sluice to the defendant's property and the defendant has the right to draw water from the sluice but the right was their at the time when the properties of the defendant were paddy field but now the properties are converted as garden lands. Even thereafter, the plaintiff did not object drawing of water through the sluice from the pond.

10. The additional 4th defendant on the basis of Ext.B1 to B4 attempted to canvas that the pond is included in the title of the defendant and therefore no

injunction can be granted. I shall consider the contention only for the limited purpose of deciding the claim of possession. Ext.B1 is a partition deed of the year 1123 ME executed between one Raghavanpillai and his sister Pankajakshi. A schedule property was set apart to the said Raghavanpillai and in the property description of A schedule, it is recited as follows:- "പട്ടികവസ്തുവിലെ കൃഷികൾക്കുപയോഗപ്പെടുത്തി വരുന്ന തെക്കുപടിഞ്ഞാറടുത്തുള്ള കുളവും"

The said Raghavanpillai's children (original first defendant) and others effected partition of A schedule property in Ext.B1 deed and the original defendant obtained 29 cents out of A schedule in Ext.B1 and in that schedule as well (Ext.B2) it is recited that, "കൃഷിക്ക് ഉപയോഗപ്പെടുത്തി വരുന്ന തെക്കുപടിഞ്ഞാറടുത്തുള്ള കുളത്തിന്റെ അവകാശവും "

Thereafter, the original defendant assigned 20 cents out of the 29 cents which he obtained as per Ext.B2 deed to the additional 4th defendant in the year 2000 and in that deed also (Ext.B3) it is described as follows:- "കൃഷിക്ക് ഉപയോഗപ്പെടുത്തി വരുന്ന തെക്കുപടിഞ്ഞാറടുത്തുള്ള കുളത്തിന്റെ അവകാശവും "

The remaining property of A schedule item No.1 in Ext.B2 deed obtained by original defendant was assigned by his children and wife to the additional 4th defendant on 20.12.2011 (after the suit) and in that deed in the schedule (Ext.B4) it is described as :- "29 സെന്റിൽ മുൻപോക്കുള്ളത് കഴിച്ചു ബാക്കിയുള്ളതും വിവരിക്കുന്ന നാലതിരുകൾക്കകത്തടയുന്നതുമായ ഒരു ആർ അറുപത്തിരണ്ടു ച. മീറ്റർ പുരയിടവും സകല

വൃക്ഷാദികളും അതിലിരുപ്പ് പായിപ്ര പഞ്ചായത്ത് X 216 -)o നമ്പർ പുരയും മൂന്നാധാരവിവരണപ്പടി തെക്കുപടിഞ്ഞാറടുത്തുള്ള കുളവും ആകുന്നു "

11. So, the description in Exts.B1 to B3 in respect of the right over the pond is in the same line, but in Ext.B4 deed which is an after suit document, it is recited that the property assigned includes the pond as well. Whereas, in all other deeds (Exts.B1 to B3). The right over pond can be deciphered as a right of use for agricultural purpose. More importantly, the western boundary of the properties so transferred is stated as property of Thevarmadam which is the property of the plaintiff herein. Now coming to Exts.A1 and A2 deeds by which the plaintiff obtained title to the plaint schedule property, it can be seen that D schedule in Ext.A1 Partition Deed of 1991 was set apart to the plaintiff having an extent of 80 cents and the southern boundary of the said 80 cents is described as road.

12. As already indicated, the garden land portion of the property of the plaintiff is lying on the northern side of the pond portion and the public road is lying on further south of the pond. So, the boundary description would indicate that the property obtained as per D schedule in Ext.A1 extends upto the public road on the south. Ext.A2 deed was executed by the mother of the plaintiff as a release deed and in Ext.A2 executed in the year 1997, in the description portion, the pond is also described so as to include the property over which the right was released. The southern boundary description of the D schedule is as provided in Ext.A2.

13. Now, that the survey number of the properties obtained by the plaintiff and the defendants also have some relevance while considering the dispute. An Advocate Commissioner was deputed to measure out the plaintiff schedule property and the properties of the defendant as per survey records. The learned advocate Commissioner has located the plaintiff schedule property based on survey records and title deeds and found that the pond on the southern side of the property of the plaintiff is coming within his title as per Ext.A1 and A2 deeds and it is the property coming within survey No.1146/1/K-124 and since the properties as per Exts.B1 to B3 are coming within survey numbers 1114-4 and 1114-2, the properties were not measured out.

14. Exts.A3 and A4 are the basic land tax receipts produced by the plaintiff and Ext.A3 would go to show that the plaintiff has remitted basic land tax for 24.28 Ares of property comprised in Survey No.1146/1K-124 which is the property identified by the learned Advocate Commissioner after the survey and in the said property, the pond is coming on the south-eastern portion of the property. The learned counsel for the additional 4th defendant contended that the basic tax receipts were manipulated by the plaintiff for the purpose of the suit and cannot be relied on. It is pertinent to note that the defendant has no case that his properties are coming within survey No.1146/1K-124. Whereas, the D schedule description in Ext.A1 and the description in Ext.A2 would go to show that the property of the plaintiff is coming within the survey No.146/1K-124. So, all these facts rule out the contention raised by the 4th defendant that since the pond

portion is a property coming under his title, no decree against the true owner can be granted.

15. The evidence of Dws 1 and 2 are are perse contradictory in respect of the so-claimed possession over the pond portion lying on the western side of the defendant's property. Whereas, the evidence of PW1 and the boundaries of the plaint schedule property and access from the southern portion of the garden land to the pond are clear indications regarding the exclusive possession of the pond portion by the plaintiff. It is true that there is a sluice on the north-eastern corner of the pond and by using the said sluice, water can be drawn to the property of the defendant. The plaintiff does not want to obstruct the defendant in drawing the water from the pond under the cover of the decree sought for. Whereas, it is apprehend that the defendants are attempting to re-claim the pond and reduce it into their possession. I shall now consider the evidence regarding the cause of action for the suit.

16. In Ext.C1 series, the learned Advocate Commissioner reported that on the south eastern corner of the pond portion, there is a deposit of soil and further east of it, in the property of the defendant, there is another load of soil piled up. It is the evidence of PW1 and the case of the plaintiff in the suit that the defendant attempted to reclaim the pond and attempted to demolish the eastern bund of the pond. The apprehension of the plaintiff regarding the reclamation of the pond, destruction of its eastern boundary and reducing the same into the possession of the defendant are proved. I have already found that the plaint schedule property

includes the pond on its south-western side and that the plaintiff is in possession and enjoyment of the same and the right available to the additional 4th defendant is only to draw water, if any, through the sluice on its north-eastern side. Therefore, plaintiff has succeeded in proving a valid cause of action for the suit and the suit is only to be decreed. Issue No.1 is found accordingly.

1. **Issue No.2:-** In view of the finding on Issue No.1, a decree is to be passed. I find no reason to deny costs following the event.

In the result, the suit is decreed as follows:

- A) Additional 4th defendant and men under him are restrained by a decree of perpetual injunction from trespassing upon the plaint schedule property, from altering its boundaries, lie and nature, from doing any act to reduce the pond situated on the southern side of the plaint schedule property or any portion thereof to his possession and from doing any act to interfere with the peaceful possession and enjoyment of the plaint schedule property including the pond therein. However, the decree shall not stand in the way of drawing water through sluice on the north-eastern corner of the pond to the property now in possession of the additional 4th defendant.
- B) Plaintiff is entitled to realise costs of the suit from the additional 4th defendant.

Dictated to Confidential Assistant, transcribed and typed by him, corrected and pronounced by me in the open Court on this the 13th day of July, 2018.

Sd/-
Joseph Rajesh.K.A.,
Munsiff.

APPENDIX

Plaintiff's Exhibits

- A1 Copy of partition deed No.4679/91 of Muvattupuzha SRO.
A2 Copy of partition deed No.4839/97 of Muvattupuzha SRO.
A3 13.6.2017 Basic Tax Receipt from Mulavoor Village.
A4 13.6.2017 Basic Tax Receipt from Mulavoor Village.

Defendants' Exhibits

- B1 Copy of Partition Deed No.1123/14 of Muvattupuzha SRO.
B2 Copy of Partnership Deed No.395/2000 of Muvattupuzha SRO.
B3 Copy of Partnership Deed No.398/2000 of Muvattupuzha SRO.
B4 Certified copy of deed No.6378/11 of Muvattupuzha SRO.
B5 16.9.2015 Document received from Tahsildar, Muvattupuzha.

Court Exhibits

- C1 26.11.2011 Commission report filed by Advocate Commissioner P.V.Baby.
C1(a) 26.11.2011 Rough sketch attached to C1 report.
C2 2.6.2017 Commission report filed by Advocate Commissioner P.V.Baby.
C2(a) 2.6.2017 Survey Plan appended to C2 report

Plaintiff's Witness

- PW1 6.3.2018 Rajan Kurian

Defendants' Witnesses

- DW1 21.6.2018 Raveendran Nair.
DW2 21.6.2018 Balakrishnan.

Typed by : KSL
Compd by :

//True Copy//

Id/-
Munsiff.

Munsiff.