

IN THE COURT OF MUNSIF, MUVATTUPUZHA

Present:

Smt. Shana Beegam, Munsiff

Monday, the 25th day of July, 2022/ 3rd Sravana, 1944

O.S.No.81/2020

Plaintiff:

Joy, aged 64 years, S/o.Abraham, residing at Chirayekkel Puthenpura House, North Piramadom, Ramamangalam Panchayath, Ooramana Kara, Memmury Village.

By Advocate Gigi Peter

Defendants:

1. Raju, aged about 64 years, S/o.Ittan, residing at Aikkarakunnel House, Kozhipilly Kara, Palakuzha Grama Panchayat, Palakuzha Village.
2. Mary @ Mariyam, aged about 83 years, W/o.Ittan, residing at Aikkarakunnel House, Kozhipilly Kara, Palakuzha Grama Panchayat, Palakuzha Village.

Exparte

This suit coming for hearing on 15.07.2022 and the court on 25.07.2022 delivered the following:

JUDGMENT

Suit for injunction.

2. Plaint averments in brief are as follows:-The plaint schedule property obtained by the plaintiff's wife by virtue of sale deed No.780/2019 of

Koothattukulam SRO. The plaintiff's wife is now at Australia. The plaintiff schedule properties are clearly identifiable from the adjacent properties by clear boundaries on its four sides. The northern side of the plaintiff schedule property is the property belonged to second defendant and it is separated by stones planted. The plaintiff is residing far away from the plaintiff schedule property but looking after the whole affairs of the same. The plaintiff obtained right of easement by grant over the southern and western private motorable way and this is the only way available to the plaintiff schedule property and the plaintiff is using the said way as a matter of right. The said way was constructed by the plaintiff's wife's predecessor and the same is being used by the plaintiff for the ingress into and egress from the plaintiff schedule property. The defendants are son and mother. The plaintiff's sister is the daughter in law of the second defendant. The second defendant has some property at east of the plaintiff schedule property and first defendant is looking after its affairs. The defendants have no motorable access to their property. So in these circumstance, the defendants approached the plaintiff on 05/03/2020 and demanded a motorable road through the plaintiff schedule property, but the plaintiff is not amenable for the same, why because the portion of the plaintiff

schedule property and its improvements will be suffered if the said motorable road is constructed. On 06/03/2020, the defendants and their men tried to trespass into the plaintiff schedule property and also tried to destroy the boundaries and improvement of the plaintiff schedule property and also made an attempt to construct a motorable road through the plaintiff schedule property. But the timely intervention of the plaintiff, in some how or other managed the situation, but the defendants threatened that at any rate, they will trespass into the plaintiff schedule property and construct motorable way through the plaintiff schedule property. The defendants have no right over the plaintiff schedule property. Hence, the suit is filed.

3. Though summons was issued, defendants remained absent and set Exparte. On the side of the plaintiff, he was examined as **PW1**. **Exts. A1 to A3** were marked. **Ext. C1 and C1(a)** also marked.

4. Now, the only point that arises for consideration is:-

Whether the plaintiff is entitled to get the relief?

5. **The point :-** Ext. A1 would show that plaintiff schedule property obtained by the wife of the plaintiff. PW1 deposed that his wife is now at

Australia and she orally authorised him to institute the suit and he is managing the property. PW1 deposed that as the boundary of plaint schedule property was mistakenly noted in Ext. A1, Ext. A2 rectification deed was executed. Ext. A3 is tax receipt pertaining to the property. PW1 deposed that the eastern side of plaint schedule property second defendant has some property and the defendants have no motorable access to the said property. PW1 deposed that defendants demanded motorable road through the plaint schedule property in continuation of the private way available at west of plaint schedule property and the plaintiff denied the request. PW1 deposed that the defendants made an attempt to form motorable way through the plaint schedule property. The learned commissioner in Exts.C1 and C1(a) identified the lie and nature of the plaint schedule property. The learned commissioner also reported about the injuries that may happen in a motorable way is formed through plaint schedule property. Hence the unchallenged evidence of PW1 coupled with the Exts.C1 and C1(a) would show that the plaintiff has a valid cause of action against the defendants. Hence, the suit is decreed as follows:-

- 1) **The defendants and men under them are hereby restrained from trespassing into the plaint schedule property, causing any damages to the boundaries and improvements of the plaint schedule property and also restrained them from constructing any way through the plaint schedule property and altering the present nature and lie of the same.**

- 2) **Plaintiff is also entitled to realize the costs from the defendants and from their assets.**

Dictated to the Confidential Asst., typed by her, corrected and pronounced by me in the open court on this the 25th day of July, 2022.

**Sd/-
Shana Beegam
Munsiff**

APPENDIX

Plaintiff's Exhibits:

A1.	25.05.2019	Certified copy of sale deed No.780/I/2019 of SRO Koothattukulam.
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A2. 24.04.2020 Certified copy of Correction deed No.395/2020 of SRO Koothattukulam.

A3. 07.09.2019 Tax receipt of Village Office Palakkuzha.

Defendant's Exhibits: NIL.

Court Exhibits:

C1. 09.08.2021 Commission report filed by Advocate commissioner Murali Manohar R in IA 2/2020.

C1(a) 09.08.2021 Rough Sketch.

Plaintiff's Witness:

PW1. 15.07.2022 Joy Abraham

Defendant's Witness: NIL.

Krv.
Comp

//True copy//

Id/-
Munsiff.

Munsiff.