

IN THE COURT OF MUNSIFF, MUVATTUPUZHA

Present:

Smt. Shana Beegam, Munsiff

Tuesday, the 29th day of November, 2022 / 8th Agrahayana, 1944

O.S No. 159 / 2021

Plaintiff:

1. Baiju V.P, S/o Paulose, aged 35 years, Vattanparakandathil (Thachamattathil), Pampakuda, Onakkoor P.O, and Village, Muvattupuzha Taluk, Ernakulam – 686667.
2. Jino Varghese, S/o K.D.Varghese, aged 44 years, Kombanal House, Piravom Village, Ernakulam – 686664.

By Advocates : Biju Abraham, Nimmiya Mohan, Lakshmi Mohan and Shabeer Ali Muhammed.

Defendants:

1. Moly Paulose, W/o Paulose, aged 59 years, Vattanparakandathil (Thachamattathil), Pampakuda, Onakkoor P.O, & Village, Muvattupuzha Taluk, Ernakulam – 686667.
2. Biju Paulose, S/o Paulose, aged 37 years, Vattanparakandathil (Thachamattathil), Pampakuda, Onakkoor P.O, & Village, Muvattupuzha Taluk, Ernakulam – 686667.
3. Eli, W/o Mathai, aged 86 years, Vattanparakandathil (Thachamattathil), Pampakuda, Onakkoor P.O, & Village, Muvattupuzha Taluk, Ernakulam – 686667 at present at K.K.J Foundation, Elanji, Perumbadavom P.O, Ernakulam – 686665.

Exparte, (By Advocates Paul Mathew and Babitha T.H)

This suit coming on for hearing on 15.11.2022 and the court on 29.11.2022 delivered the following :

JUDGMENT

Suit for fixation of boundary and injunction.

2. Plaintiff averments in brief are as follows :-

The plaintiff schedule property having an extent of 9 Ares and 31 Sq.mtrs of land with residential building having Door No. 11/257A of Pampakuda Grama Panchayath and all the improvements therein belongs to the first plaintiff by virtue of document No.311/2016. The first defendant is the mother and second defendant is the brother of the first plaintiff. The third defendant is the grandmother of the first plaintiff. The second plaintiff by agreement dated 01.04.2021 agreed to purchase the A schedule property. The plaintiff schedule property was part of the family of the first plaintiff which was originally owned by the father of the first plaintiff. Upon the death of the father, the first plaintiff along with defendants No. 1 & 2 became co-owners of the plaintiff schedule property by way of intestate succession. The defendants No. 1 & 2 relinquished their title and right over the plaintiff schedule property in favour of the first plaintiff as per release deed No. 311/2016 of

SRO, Piravom. Thereafter the first plaintiff became the absolute owner in possession of the plaint 'A' schedule property. The plaint 'A' schedule property along with other items of properties received and the property of the defendants are lying in a single compact plot and the defendants 1 & 2 are residing in the remaining portion of the common property. The property of the defendants is scheduled as plaint B schedule property. There was no motorable road access to the entire property and only a small walkable way was there and it reaches at the north-eastern corner of plaint B schedule property in which defendants 1 & 2 are residing. The plaint B schedule property is in the joint ownership of plaintiff and defendants. The said property was originally belonged to third defendant and her husband Mathai as per document No. 1801/1959 of SRO Koothattukulam. From which the third defendant executed her half right in favor of the first and second defendants as per document No. 675/1994 of SRO Piravom. The grand father of the first plaintiff died intestate as also the father of the 1st plaintiff died intestate. The father of the first plaintiff is the

only son of the grand parents of the first plaintiff. Thus the first plaintiff also became the joint owner of the plaint 'B' schedule property as per intestate succession. The first plaintiff reserves his right over the plaint B schedule property. As the third defendant is one of the co-owners of the property she is also made party to this suit proceedings and no relief is sought for against her. While the construction of the house in the plaint 'A' schedule property was going on the second defendant trespassed into the property and destroyed the front door and kitchen slabs of the house and caused material loss to the first plaintiff in which the Piravom Police has registered a crime against second defendant. In addition to that when the second defendant attacked the wife of the first defendant, the police has registered another crime against second defendant. But both the cases when came before the court for trial, the matter was settled in court in 2018 and that was taken place on the day of the return of the first plaintiff to abroad. Thereafter, the first plaintiff came back in 2020 and he had rented out the house in the plaint 'A' schedule property to a third party. The defendants again

started obstruction over the plaint 'A' schedule property. Since at that point, the first plaintiff was abroad and he could not initiate any action against defendants 1 & 2. But the tenant occupying the house lodged a complaint against them. Due to the obstruction was made tenant left out the premise. On arrival of the first plaintiff from abroad, he had noticed the obstructions and hurdles made by defendants 1 & 2 over the newly constructed road to his house and also the waste committed in the plaint 'A' schedule property and though a complaint was lodged before the police the same was not acted upon. As the defendants 1 & 2 are continuing with their illegal acts and causing nuisance, the plaintiff had decided to sell the plaint 'A' schedule property. And lastly the second plaintiff was found to purchase the property and the plaintiffs had entered into an agreement for sale of plaint schedule property on 01.04.2021. But when the plaintiffs attempted to effect completion of the house and the agricultural operation in the property by developing land the same was obstructed by defendants 1 & 2, on 21.04.2021. Since at that time Police Officials were busy with election duties,

they had not done anything except receiving the complaint. The easy entry of defendants 1 & 2 to the plaint 'A' schedule property is the open boundary between A & B schedule properties. If physical boundary is made in between these two properties defendants are prohibited from entering into the plaint 'A' schedule property. All other are having clear demarcations and physical boundary. Plaintiffs are therefore entitled for a decree for fixation of boundary between plaint A & B schedule properties with the right of construction of wall or fence in the boundary and also for a permanent prohibitory injunction against the defendants from entering into the plaint 'A' schedule property. Hence, the suit is filed.

3. On issuance of summons defendants No. 1 and 2 entered into appearance but on 24.6.2022, the counsel for defendant No. 1 and 2 reported no instruction and they are called absent and set-exparte. Defendant No. 3 also not filed any written statement or vakkalath. Defendant No. 3 is also called absent and set-exparte. Thereafter, on 17.10.2022 it is submitted that second

plaintiff is no more and the first plaintiff is not intending to take steps for impleading the LRs of second plaintiff.

4. **The only point that arise for consideration is :-**

Whether the plaintiffs are entitled to get the relief?

5. On 15.11.2022, first plaintiff was present and he was examined as PW1, Exts. A1 to A12 were marked. Ext.C1 & C1(a) also marked.

6. **The point:-**

PW1 filed chief affidavit re-iterating all the averments in the plaint. PW1 deposed that by virtue of Ext.A1 he had obtained exclusive ownership over the plaint 'A' schedule property. As per the plaint description, the plaint A schedule property, is having an extent of 9 Ares 31 Sq.mtrs of land covered by document No. 311/2016 with a residential building bearing Door No. 11/257A of Pampakuda Grama Panchayath with right of way from the east from Ooranattuchira Road and all improvements therein. The first defendant is the mother of the first plaintiff and second defendant is

his brother and third defendant is his grand mother. The plaint A and B schedule properties earlier belonged to the family of the plaintiff and he obtained the exclusive ownership and possession over the plaint A schedule property by virtue of Ext.A1. In the plaint B schedule property the plaintiff is also having right as it was originally belonged to the grandfather of the first plaintiff and third defendant and when the grandfather died intestate, the father of the first plaintiff being the sole son of the grandparents, the plaintiff as well as the first, second and third defendants became the joint owners and in possession of the plaint B schedule property. The father of the first plaintiff also died intestate. By virtue of document No. 675/1994 of Piravom SRO, the third defendant executed her half right over the property in favour of the first and second defendant by virtue of Ext.A4. Ext.A3 is the document executed by the third defendant in favour of the father of the first plaintiff. Ext.A5 is the prior document to Ext.A4. Ext.A2 is the location sketch of the plaint schedule property.

7. According to PW1, in plaint 'A' schedule property he is

having exclusive ownership and possession and in plaint B schedule property he is having joint ownership and possession. PW1 deposed that he reserves his right over plaint B schedule property and the suit was filed for fixation of boundary between plaint A & B schedule properties and for consequential injunction.

8. PW1 deposed that while he was making constructions of the house in the plaint 'A' schedule property, second defendant trespassed into the plaint schedule property and destroyed the front door and kitchen slab of the house and caused material loss to him and a crime was registered against the second defendant. In addition to that second defendant attacked the wife of the PW1 on 20.11.2016 and the police had registered another crime against second defendant. But both the cases were settled in mediation and the first plaintiff returned to abroad.

9. PW1 deposed that when he came back in 2020 he had rented out his house in the property to one person named Majeesh, and at that point of time also defendants No. 1 and 2 again started obstructions in the plaint 'A' schedule property and also the persons

residing therein. As the first plaintiff was abroad, the tenant residing therein filed complaint against defendants No. 1 and 2 and he vacated the premises because of the nuisance of defendant No. 1 and 2. Thereafter, on arrival of the first plaintiff, he had noticed the obstructions and hurdles made by defendants No. 1 and 2 over the newly constructed road over to the house in plaint 'A' schedule property. From Ext.A6, it can be seen that on 06.03.2021, the first plaintiff had filed a complaint before the police, Ext.A7 is the acknowledgement receipt of the said complaint.

10. PW1 deposed that, he had entered into an agreement with the second plaintiff, for the purchase of the property and when he attempted to effect the completion of the house, the agricultural operations in the property by developing the land, the same was obstructed by defendants No. 1 and 2. From Ext.A8 on 21.04.2021, they filed complaint against defendants No. 1 and 2 before the police. Ext.A9 is the acknowledgement receipt of the said complaint. Ext.A10 is the agreement entered into between first and second plaintiffs with respect to the sale of plaint 'A'

schedule property on 01.04.2021. Ext.A12 is also another complaint filed by the plaintiffs on 22.07.2021 and Ext.A11 is the acknowledgement receipt of the same.

11. PW1 deposed that the defendants are having no manner of right to enter into the plaint A schedule property or to make use of it for any purpose without consent of the plaintiffs. PW1 further deposed that the easy entry of defendant No. 1 and 2 to plaint 'A' schedule property is enabled through the open boundary between plaint 'A' & 'B' schedule properties and hence physical boundary is to be made in between these two properties.

12. The learned commissioner in Ext.C1 and C1(a) reported that in between the plaint A and B schedule properties there is no boundaries. It is further reported that the plaint B schedule property is lying on the south western side of the plaint 'A' schedule property. It is pertinent to note that the relief sought for herein is to fix the boundary between plaint 'A' and 'B' schedule properties. But the plaintiff had not taken any steps for a survey commission to ascertain the exact boundaries in between plaint 'A' and 'B' schedule

properties. The court cannot ascertain where the boundary is to be fixed as there is no survey commission report. It is specifically stated in the Ext.C1, C1(a) and also from the deposition of PW1 it is clear that there is no demarcation between the plaint 'A' and 'B' schedule properties. The plaintiff failed to establish a case in his favour and hence the suit is dismissed. There is no order as to costs.

Dictated to the Confidential Asst., typed by her, corrected and pronounced by me in the open court on this 29 day of November, 2022.

**Sd/-
Shana Beegam,
Munsiff**

APPENDIX

Plaintiff's Exhibits:

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|----|------------|---|
| A1 | 20.02.2016 | Certified copy of Release Deed No.311/16 of SRO Piravom. |
| A2 | 21.03.2016 | Photocopy of location sketch issued by Village Officer, Onakkoor. |
| A3 | 17.03.1994 | Certified copy of Sale Deed No.674/1994 of SRO Piravom. |
| A4 | 17.03.1994 | Certified copy of Sale Deed No.675/1994 of SRO Piravom. |
| A5 | 17.06.1959 | Certified copy of Settlement Deed No.1801/1959 |

of SRO Koothattukulam.

- A6 06.03.2021 Photocopy of complaint to the SHO Piravom Police Station.
- A7 06.03.2021 Copy of receipt from Piravom Police Station.
- A8 21.04.2021 Copy of complaint to SHO Piravom Police Station.
- A9 21.04.2021 Photocopy of receipt from Piravom Police Station.
- A10 01.04.2021 Original Sale Agreement.
- A11 22.07.2021 Copy of receipt from Piravom Police Station.
- A12 22.07.2021 Copy of complaint to Circle Inspector Piravom Police Station.

Defendant's Exhibits: NIL.

Court Exhibits :

- C1 29.06.2021 Commission report filed by Adv.Commissioner K.R.Sunilkumar in I.A 3/2021.
- C1(a) 29.06.2021 Rough Sketch.

Plaintiff's Witnesses:

- PW1 15.11.2022 Baiju V Paulose.

Defendant's Witness: NIL.

SAA.
Comp.

//True copy//

Id/-
Munsiff.

Munsiff.