

IN THE COURT OF THE MUNSIFF KOLENCHERY

Present:- Sri. Anup A.B, LL.B., Munsiff.
Monday the 30th day of July, 2018/ 8th Sravana, 1940

OS. No.27/2014

Plaintiffs:-

1. K.V.Babu, S/o.Varkey, aged 58 years,
Kuplasseril House, Marangattully Kara,
Thiruvaniyoor Village, Thiruvaniyoor.P.O.
2. Arun Babu, aged 24 years, S/o.K.V.Babu,
Kuplasseril House, Marangattully Kara,
Thiruvaniyoor Village, Thiruvaniyoor.P.O.

By Adv.M/s.Mathew P Paul and Finimole.T.P

Defendants:-

- 1 Thankappan, S/o.Palliyan,
aged about 50 years, Pattanmarukudiyil House,
Marangattully Kara, Thiruvaniyoor Village. (Died)
 2. Karthika, W/o.Palliyan,
aged about 70 years, Pattanmarukudiyil House,
Marangattully Kara, Thiruvaniyoor Village
 3. Chandran, S/o.Palliyan,
aged about 40 years, Pattanmarukudiyil House,
Marangattully Kara, Thiruvaniyoor Village
- Addl.D4. Bindu Thankappan, W/o.Thankappan,
aged about 45 years, Pattanmarukudiyil House,
Marangattully Kara, Thiruvaniyoor Village.
- Addl.D5. Aswathy Thankappan, D/o.Thankappan,
aged 21 years, Pattanmarukudiyil House,
Marangattully Kara, Thiruvaniyoor Village
- Addl.D6. Athira Thankappan, D/o.Thankappan,
aged 19 years, Pattanmarukudiyil House,
Marangattully Kara, Thiruvaniyoor Village

Additional D4 to D6 Impleaded as per Order in IA.484/2014 dated 24.01.2015

By Adv. Sri.K.C.Paulose

This suit coming on for final hearing before me on 19.07.2018 in the presence of the counsels for both sides and the Court on 30.07.2018 delivered the following.

J U D G M E N T

1. This is a suit for fixation of boundary, mandatory injunction, recovery of possession and permanent prohibitory injunction.

2. **Case of the plaintiff in brief:** Plaintiff A schedule property belongs to the second plaintiff by virtue of sale deed No:680/2004 of SRO Puthencruz. Plaintiff A schedule property is a way starting from the southern side of the panchayat road towards north upto other properties of the plaintiffs. The first plaintiff is looking after plaintiff A schedule property for and on behalf of the second plaintiff. Plaintiff B schedule property belongs to the first plaintiff by virtue of sale deed No:5665/2006 of SRO Puthencruz. The property of the defendants is situated on the western side of plaintiff A schedule property and the southern and eastern side of plaintiff B schedule property. Formerly plaintiff A schedule property belonged to a person by name Varkey and during in the year 1958 the father of the first plaintiff obtained the property from Varkey by exchange and the very same extent of property belonging

to the father of the first plaintiff was given to Varkey. Plaintiff A schedule property was obtained by father of the first plaintiff for constructing a way to his remaining property situated on the northern side of plaintiff A schedule property. Plaintiff A schedule property is having an extent of 4.6 Ares in re-survey No:234/1 in Block No:42 of Thiruvaniyoor village. There is a well demarcated boundary on the western side of plaintiff A schedule property separating the same from the property of the defendants. The defendants have no manner of right over plaintiff A schedule property. The property of the defendants does not have a well defined boundary on the southern side and it is open to the public road on the south. On 23.03.2014 the defendants collected a huge quantity of granite rubbles on the southern end of their property and demolished the boundary in between their property and plaintiff A schedule property with an intention to reduce the width of plaintiff A schedule property. Plaintiffs preferred a complaint before the Police and due to the intervention of the Police the attempt of the defendants was foiled and they openly declared that they will reduce the width of the remaining portion of the plaintiff A schedule property during court vacation. On 02.04.2014 defendants encroached into some portions of plaintiff A schedule property and constructed a granite wall. Plaintiff C schedule property is a part of plaintiff A schedule property encroached by the defendants and the plaintiffs are entitled to recover the same from the defendants. Plaintiff D schedule property belongs to the defendants. There is no well demarcated boundary on the southern and eastern side of plaintiff B schedule property separating

the property of the defendants. So the plaintiffs prays for fixing the western boundary of plaint A schedule property separating the property of the defendants. Plaintiffs also prays for a decree of mandatory injunction directing the defendants to demolish the granite wall constructed on the eastern side of their property failing which the plaintiffs may be permitted to remove the said wall at the expense of the defendants. The plaintiffs prays for recovery of possession of plaint C schedule property from the defendants and a decree of permanent prohibitory injunction restraining the defendants, their men and agents from trespassing into plaint schedule properties, restraining them from doing anything which affects the right and title of the plaintiffs over plaint A schedule property and from obstructing the construction of boundary walls in plaint schedule properties separating same from the property of the defendants. Hence this suit.

3. The defendants filed written statement opposing the contentions of the plaintiffs. Plaint A schedule property was originally a purampoke land with a width of 2 Mtrs. It was the boundary in between the kayyalas on the property of the defendants on the west and on the side of Varkey in the east. Later on plaintiff's family got some property from Varkey and they constructed a road along the pocked road 10 years back. There was a mud wall to separate the property of the defendants and defendants constructed boundary walls when they got a subsidy. There are well demarcated boundaries on the east and south of the property of the defendants and the defendants have no intention to reduce the width of plaint A

schedule property. When the defendants started constructing granite walls in their property plaintiffs came along with the Police and they demarcated the boundary and placed survey stones. Thereafter the defendants constructed their boundary wall on the southern and eastern sides of their properties. The plaintiffs are big landlords and they wanted to purchase the property of the defendants which is lying in between their properties for which the defendants were not amenable. So the plaintiffs are not in good terms with the defendants and they have filed this suit so as to evict the defendants and their family from their property. Hence defendants prays for dismissing the suit with their costs. The defendants filed additional written statement contenting that plaint C schedule property is not a part of plaint A schedule property. Plaint C schedule property is a part of plaint D schedule property. There are definite boundaries on the southern and eastern side of the property of the defendants and they have no intention to reduce the width of plaint A schedule property. The description of the schedule included in the plaint by way of amendment is not correct. Hence the defendants prays for dismissing the suit with their costs.

4. On the basis of these rival contentions the following issues arise for trial:-

- 1) Whether the plaintiffs are entitled to get a decree for fixation of boundary as alleged in the plaint ?
- 2) Whether the plaintiffs are entitled to get a decree of

mandatory injunction as prayed for ?

- 3) Whether the plaintiffs are entitled to get a decree of permanent prohibitory injunction as prayed for ?
- 4) Whether the plaintiffs have title over plaint C schedule property ?
- 5) Whether the defendants are in possession of plaint C schedule property ?
- 6) Whether the plaintiffs are entitled to recover possession of plaint C schedule property from the defendants ?
- 7) Reliefs and costs.

5. On the side of the plaintiffs PW1 was examined and Ext.A1 to Ext.A4 were marked. From the side of the defendants DW1 was examined. The commission reports and plans were marked as Ext.C1, Ext.C1(a) and Ext.C2, Ext.C2(a).

6. **Issues No:1, 4, 5 & 6:** For the sake of convenience these issues are considered together. According to the plaintiffs plaint A schedule property belongs to the second plaintiff by virtue of Ext.A1 document which was executed in the year 2004. The first plaintiff transferred the property in the name of the second plaintiff as per Ext.A1 document and the total extent of the property as per Ext.A1 document is 4.60 Ares. Plaint A schedule property is situated in resurvey No:234/1 in Block No:42 of Thiruvaniyoor village. Plaint A schedule property is a way in order to reach plaint B schedule property which is owned by the first plaintiff by virtue of

Ext.A4 document. As per Ext.A4 document the total extent of plaint B schedule property is 1 Acre 75 cents in resurvey No:232/26 and 232/17. According to the plaintiffs in the year 1958 father of the first plaintiff obtained plaint A schedule property by way of exchange from a person by name Varkey and thereafter he made a road to his remaining property situated on the northern side of plaint A schedule property. According to the plaintiffs there was a well demarcated boundary in order to separate plaint A schedule property and plaint D schedule property which is situated on its west which belongs to the defendant. Plaint D schedule property is situated in re-survey No:232/18 in Block No:42 of Thiruvaniyoor Village. Thereafter the boundary in between plaint A schedule property and plaint D schedule property was demolished by the defendants and they constructed a boundary wall by encroaching into plaint A schedule property and the encroached portion is plaint C schedule property. The plaintiffs also contented that there is no well demarcated boundary on the southern and eastern side of plaint B schedule property which is abutting plaint D schedule property. So as per the plaintiffs there is no boundary on the western side of plaint A schedule property and on the southern and eastern side of plaint B schedule property which is abutting plaint B schedule property. The plaintiff also contented that some portions of plaint A schedule property was encroached by the defendants and they constructed a boundary wall by including some portions of plaint A schedule property. According to the defendants formerly plaint A schedule property was a

purampoke pocket road which had a width of 2 Mtrs which was the boundary in between the property of the defendants and the property of Varkey on the east. Thereafter the plaintiffs purchased property from Varkey and constructed a road 10 years back along the pocket road. There was a mud wall on the boundary of the plaint D schedule property and thereafter when they started constructing another boundary wall by using stones plaintiff came along with the Police and they demarcated the boundary. Thereafter the defendants constructed a boundary wall through the boundary demarcated by the plaintiffs. According to the defendants there is a well demarcated boundary on the western side of plaint A schedule property separating the property of the defendants. They also contented that plaint C schedule property is included in plaint D schedule property. So according to the defendants there is a well demarcated boundary in between plaint A and D schedule properties and plaint C schedule property belongs to them. But they have no contention that there is a boundary on the eastern and southern side of plaint B schedule property which separates the same from plaint D schedule property. So the defendants have not challenged the contention by the plaintiff that there is no boundary on the eastern and southern side of plaint B schedule property.

7. The first plaintiff was examined as PW1 and in the affidavit in lieu of examination-in-chief he stated in conformity with the averments in the plaint. During cross examination he reiterated that plaint A schedule property was purchased by his father in the year 1958 for the purpose of constructing a road and plaint A

schedule property was purchased by the second plaintiff from PW1 in the year 2004. It is also revealed that apart from the plaintiffs three other persons are also using plaint A schedule property and according to PW1 on the southern side plaint B schedule property it had a width of 15 Feet. PW1 denied the suggestion put forward by the counsel for the defendants that the plaintiffs widened plaint A schedule property by using JCB and they were restrained by the people in the locality. He also denied the suggestion that there is a well demarcated boundary on the western side of plaint A schedule property. During re-examination PW1 stated that plaint A schedule property had a width of 6.1 Mtrs before filing of the suit. So from the evidence of PW1 it could be seen that nothing could be brought out during cross examination to come to a conclusion that there is a boundary in between plaint A and D schedule properties. The Commissioner who inspected the property twice was examined as PW2 and the Commission reports, rough sketch and the survey sketch were marked as Ext.C1. C1(a), C2 and C2(a). The clerical errors made by the Commissioner in Ext.C1 report were corrected during examination-in-chief and during cross examination it was revealed that initially the Commissioner measured plaint A schedule property by using tape and she has noted that the same is having different width of 15 Feet and 13 Feet. On a perusal of Ext.C1 report it could be seen that the Commissioner has mentioned with regard a boundary in between plaint A and D schedule properties. But she has not mentioned that on the entire portion on the eastern side of plaint A schedule

property there is a well demarcated boundary. She has also mentioned that the boundary in between the properties has been demarcated by using a rope and at the time of inspection on 29.05.2014 a trench was also made for the construction of a stone wall. So from Ext.C1 report it could be seen that there is no well demarcated boundary on the western side of plaint A schedule property separating the same from plaint D schedule property. The Commissioner has only mentioned with regard to a mud wall in some areas and boundary demarcated by using rope which cannot be considered as a proper boundary. In Ext.C2(a) survey sketch the Commissioner has shown the boundaries of plaint D schedule property as H I J K and in Ext.C2(a) property No.1 is plaint A schedule property, property No.2 is plaint C schedule property, properties. No.4 and 5 are plaint B schedule property and property No.3 is plaint D schedule property. As per the Commissioner the properties were measured on the basis of survey sketch and title deeds. The measurement of these properties are not challenged by the defendants and they have also not made any objections to Ext.C2 and C2(a). The defendants have also not challenged the absence of boundary in between plaint B and D schedule properties. From the Commission report it is also clear that there is no well demarcated boundary in between plaint A and D schedule properties.

8. One of the eye witness from the side of the defendants was examined as DW1. According to him some persons under the leadership of the plaintiffs attempted to forcefully take possession of the property belonging to the defendants

by using JCB and they demolished some portions of the boundary wall. According to him plaint A schedule property was a public way having a width of 2 Mtrs. When the defendants started constructing stone walls after getting subsidy from the Government the plaintiffs came along with the Police and the boundary was fixed as per the directions of the Police after leaving 2 Mtrs width way and the defendants constructed a stone wall. According to DW1 there is a mud wall which is almost situated 1.5 Mtrs on the west of the newly constructed stone walls by the defendants. So from the examination-in-chief itself it is clear that a new stone wall was constructed more than 1.5 Mtrs towards west. During cross examination it was revealed that DW1 admitted that plaint C schedule property belongs to the plaintiffs. DW1 was unable to depose anything with regard to the property of the defendants and according to him he has seen a resurvey sketch which shows that the width of plaint A schedule property is 3.2 Mtrs. But such a resurvey sketch is never produced from the side of the defendants. According to DW1 the width of plaint A schedule property was increased in the year 2013 by the plaintiffs by using JCB excavator. But the defendants have no such contentions in their pleadings that the plaintiffs widened the way in the year 2013 by using JCB. Their only contention is that the plaintiffs came along with the Police when they started construction of a stone wall. So DW1 is totally unaware as to the details with regard to plaint A to D schedule properties and he has admitted the fact that plaint C schedule property belongs to the plaintiffs. From the evidence of DW1 it is clear that stone wall was

constructed after the boundary was demarcated by the Police. It is not clear as to how the Police demarcated the boundary in between plaint A and D schedule properties without any measurements. The defendants has also not produced any documents to prove the correct width of plaint A schedule property. No evidence has been adduced from the side of the defendants to prove that plaint C schedule property belongs to them. More over the witness from the side of the defendants admitted that plaint C schedule property belongs to the plaintiffs.

9. So from the above discussions it is clear that there is no well demarcated boundary in between plaint A and D schedule properties as well as plaint B and D schedule properties. Plaint C schedule property belongs to the plaintiffs and they have proved their title over the same. No document has been produced from the side of the defendants to prove their title over plaint C schedule property. Admittedly a boundary wall was constructed in between plaint A and D schedule properties only based on the directions given by the Police which cannot be taken into account and the same was constructed without making any measurements. So it is clear that the defendants are now in possession of plaint D schedule property which belongs to the plaintiffs. So the plaintiffs are entitled to get the boundary in between plaint A and D schedule properties and plaint B and D schedule property fixed and they are entitled to recover possession of plaint C schedule property from the defendants in which they are having title. So these issues are found in favour of the plaintiffs.

10. **Issues No:2 & 3:** In the light of the discussions in issues No:1, 4, 5 & 6 it is clear that the second plaintiff is in possession of plaint A schedule property and he is in possession of plaint A schedule property and he is having title over the same. The defendants constructed a boundary wall on the eastern side of plaint D schedule property by encroaching into plaint A schedule property. So the defendants are liable to demolish the portion of the boundary which encroaches into plaint A schedule property. The apprehension of the plaintiffs that the defendants will trespass into plaint schedule property is also clear from the evidence adduced. So the defendants are to be directed by a decree of mandatory injunction to demolish the granite wall constructed on the eastern side of their property failing which the plaintiff will be permitted to remove the same at the expense of the defendants. The defendants are also to be restrained by a decree of permanent prohibitory injunction from trespassing into plaint schedule property from doing anything to affect the right and title of the plaintiffs over plaint schedule property or to obstruct the construction of boundary wall separating plaint schedule properties and the property of the defendants. So these issues are found in favour of the plaintiffs.

11. **Issue No: 7:** In the light of the discussions in issues No:1 to 6 it is clear that the plaintiff is entitled to get the western boundary of plaint A schedule property fixed and the eastern and southern side of plaint B schedule property fixed as per Ext.C2(a) survey sketch. Plaintiffs are also entitled to get a decree of

mandatory injunction directing the defendants to demolish the granite wall constructed on the eastern side of plaint D schedule property failing which the plaintiff is permitted to remove the same at the expense of the defendants. The defendants, their men and agents are to be restrained by a decree of permanent prohibitory injunction from trespassing into plaint schedule property, from doing anything to affect the right and title of the plaintiffs over plaint A schedule property and from obstructing the construction of boundary walls on the plaint schedule property separating the same from the property of the defendants and the suit is liable to be decreed.

12. In the result suit is decreed as follows:-

- 1) H I survey line in Ext.C2 survey sketch is fixed as the western boundary of plaint A schedule property separating the same from plaint D schedule property.
- 2) I J survey line in Ext.C2 survey sketch is fixed as the boundary on the southern side of plaint B schedule property separating the same from plaint D schedule property.
- 3) J K survey line in Ext.C2 survey sketch is fixed as the boundary on the eastern side of plaint B schedule property separating the same from plaint D schedule property.
- 4) Plaintiff is entitled to recover possession of plaint C schedule property from the defendants.

- 5) The defendants are directed by a decree of mandatory injunction to demolish the granite wall constructed on the eastern side of their property failing which the plaintiff is permitted to remove the same and recover the expenses from the defendants and their assets.
- 6) The defendants, their men and agents are restrained by a decree of permanent prohibitory injunction from trespassing into plaintiff schedule property, from doing anything to affect the right and title of the plaintiffs over plaintiff A schedule property and from obstructing the construction of the boundary wall of plaintiff schedule properties separating the same from the property of the defendants.
- 7) Ext.C2(a) survey sketch shall form the part of the decree.
- 8) Plaintiffs are entitled to costs in the suit.

Dictated to the Confidential Assistant transcribed by her corrected and pronounced by me in open court on the 30th day of July, 2018.

Sd/-
Anup A.B
Munsiff

APPENDIX

Exhibits for Plaintiffs:-

- | | |
|------------------------|---|
| 1. Ext.A1 – 04.02.2004 | : Sale Deed No.680/1/04 of SRO, Puthencruz |
| 2. Ext.A2 – 28.02.2018 | : Tax Receipt of Thiruvaniyoor village office |
| 3. Ext.A3 - | Certified copy of Re-survey plan of survey No.234/1 |

4. Ext.A4 – 08.08.2006 Sale Deed No.5665/06 of SRO, Puthencruz

Exhibits for Defendants :- Nil

Court Exhibits:-

1. Ext.C1 – 29.05.2014 : Commission Report prepared by Adv.Minikumari.K.A
2. Ext.C1(a) – 29.05.2014 : Rough sketch prepared by Advocate Adv.Minikumari.K.A
3. Ext.C2 – 19.03.2016 : Commission Report prepared by Adv.Minikumari.K.A
4. C2(a) – 19.03.2016 : Plan prepared by the Taluk Surveyor, Kunnathunad

Witness for Plaintiff:-

1. PW1 – 02.03.2018 : Sri.K.V.Babu
2. PW2 – 16.03.2018 : Minikumari.K.A

Witness for defendants:-

- 1 DW1 – 28.03.2018 : Raju.K.M

Id/-
Munsiff.

/ / / TRUE COPY / / /

Smitha.S.R
Com. By. Binu.K.I

Munsiff.

JUDGMENT
IN
OS. No.27/2014
Dated:30.07.2018