

IN THE COURT OF THE MUNSIFF, KATTAPPANA
PRESENT: ANUPAMA S PILLAI, MUNSIFF

Thursday, the 16th day of March, 2023.
25th day of Phalguna, 1944.

O.S 23/2020

PLAINTIFF : K.J. George, aged 69 years, S/o Jacob,
Kunnathupothiyil House, Vellilamkandom Kara,
Kalthotty P.O, Kanchiyar Village.

By Adv. A.M. Michael

DEFENDANT 1. The Kanchiyar Grama Panchayath by the Secretary,
Kanchiyar Grama Panchayat, Kanchiyar Kara,
Kanchiyar Village.

2. Mercy Joseph, aged about 50 years, Kochuparambil
House, Kalthotty Kara, Kanchiyar Village.

3. Rejina Benjamin, aged about 48 years, Maroor House,
Vellilamkandom Kara, Kanchiyar Village.

By Adv. K.G. Shajimon – D1
No Vakkalath - D2, D3, Set exparte

This suit is filed Under Order VII Rule 1 of the Civil Procedure Code and coming before me for hearing on 25.01.2023 and having been stood over for consideration till 16.03.2023 in the presence of the above counsel and the court on the same day delivered the following:-

JUDGMENT

The suit is for realization of damages, mandatory injunction and other reliefs.

2. **Plaintiff's case in brief is as follows:-** The plaint schedule property is owned by the plaintiff. He obtained the property by way of a conveyance deed No.865/1996 of SRO, Kattappana. Plaintiff is residing in the schedule property with his family. The property is cultivated with coffee plants, pepper vines and coconut trees. On the southern boundary of schedule property a water channel traverses through which water flowed during rainy seasons towards west to reach the drainage channel of Kattappana- Kuttikkanam road. The 2nd defendant is the member of ward No.14 of Kanchiyar gramapanchyat. At her instance, the first defendant caused the water channel at the southern boundary being filled with soil and later concreted it for a length of 150 mts from the Kattappana-Kuttikkanam road up to the south eastern boundary of schedule property to convert the same into a road. The work was carried out under the employment assurance scheme supervised by the 3rd defendant. The water channel was filled in a most negligent and careless manner resulting in the diversion of water to the schedule property causing substantial damages to the crops in the schedule property. Four yielding pepper vines, 9 non-yield coffee plants and one coconut palms in the schedule property were destroyed by the water flow through the schedule property. A water channel with a width of 1 feet and depth of $\frac{3}{4}$ feet was found in the schedule property. The plaintiff is entitled to realise damages to the tune of Rs.22,250/- from the defendants jointly and severally for their alleged act. Plaintiff is entitled to a decree of mandatory injunction commanding the defendants to prevent flow of water from the concrete road at the south of the schedule property into the schedule property. Hence the suit filed.

3. On service of summons, though the defendants entered appearance, they have not filed written statement. Hence the case was proceeded against them under O.8.R.10 C.P.C. The case was proceeded with the plaintiff's evidence then.
4. Proof affidavit filed in lieu of chief examination. PW1 and PW2 were examined. Exts. A1 to A3, A3(a) to (c) series were marked. Exts.C1 and C1(a) were marked as Court exhibits.
5. The precise case of the plaintiff is that he is the absolute owner in possession and enjoyment of the schedule property obtained by him by way of Ext. A1 sale deed. Ext.A2 is the tax remittance receipt in relation to the schedule property. The property is a cultivated land with coffee plants, pepper vines and coconut trees. On the southern side, there traverses a water channel through which rain water flows to the drainage channel of Kattappana-Kuttikkanam road. At the instance of D2, D1 panchayat filled the water channel with soil and concreted it upto the south eastern boundary of schedule property causing the diversion of water flow directly into the schedule property. Due to the very construction, yielding crops in the schedule property were damaged causing a loss to the tune of Rs.22,250/-. Further, by the flow of water, a new water channel formed in the schedule property.
6. PW1 deposed in tune with the plaint averments by way of proof affidavit filed in lieu of chief examination.

7. Further, on local inspection, by way of Ext.C1, the commissioner has identified the schedule property as an agricultural land lying south to north in a slanting position. He has seen pepper vines, coffee and plantain cultivations at the schedule property. He has seen the water channel on the southern side of the schedule property been converted into a concreted road in recent times. It is pertinent his observation that the water that flows through the road on reaching the southern boundary of the schedule property is prevented by the existence of a hump at the road. The water then flows through the western boundary passes to the northern boundary schedule property. Further it is observed by him that due to the very water flow through the road on the southern boundary of the property then to the schedule property, a water channel is seen formed at the schedule property. Due to the passage of water through the schedule property, four pepper vines, one coconut tree and eight coffee plants were seen destroyed. But the commissioner assesses the probable loss at an amount of Rs.6,600/- instead of Rs.22,250/- as calculated by the plaintiff in the plaint.
8. The commissioner deposed in tune with Ext.C1 while he was examined as PW2. The findings in the commission report remains uncontroverted.
9. The oral evidence of PW1 and PW2 remains uncontroverted and unchallenged. In the absence of any contra evidence, on the oral evidence of PW1 coupled with Ext.C1 proves the case of the plaintiff.

10. With regard to the claim for damages it is the specific case of the plaintiff that the panchayat has concreted the water channel causing the water to flow through the schedule property. The 3rd defendant is the contractor who carried out the work for the local self government body who cannot be attributed with the liability. Similar is the case of D2 who is the only representative of the ward for the panchayat who cannot be said to have any personal liability for the construction work at the instance of D1. Hence plaintiff is entitled to realize Rs.6,600/- as assessed by PW2 from D1. However, this Court is not inclined to grant any interest on the amount awarded on default.

In the result,

The suit is decreed in part with costs as follows:

(i) The first defendant shall pay Rs.6,600/- (Rupees Six Thousand Six Hundred only) towards damages to the plaintiff.

(ii) The defendants are commanded by way of a mandatory injunction to prevent rain water to flow from the concrete road at the southern boundary of schedule property.

Dictated to the Confidential Assistant, transcribed and typewritten by her, corrected and pronounced by me in open court on this the 16th day of March 2023.

ANUPAMA S PILLAI
MUNSIFF, KATTAPPANA

APPENDIX

Plaintiffs' Exhibits:-

A1	01.03.1996	:	Copy of sale deed No. 865/1996
A2	23.05.2018	:	Basic tax receipt
A3, A3 (a) to (c) series	-	:	Legal notice with postal receipts 3 in numbers

Defendant's Exhibits:- : Nil

Court Exhibit:-

C1, C1 (a)	17.11.2020	:	Commission report with rough sketch filed by Adv. Baiju Abraham
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Plaintiff's Witness:-

PW1	15.10.2022	:	K.J. George
PW2	15.12.2022	:	Adv. Baiju Abraham

Defendant's Witness:- : Nil

Court Witness:- : Nil.

MUNSIFF

Typed by :Princy
Compd by: Simi

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FAIR
JUDGMENT IN O.S. 23/2020
DATED: 16.03.2023.