

IN THE COURT OF THE MUNSIFF, KATTAPPANA
PRESENT: FELIX JOHN, MUNSIFF
Wednesday the 27 th day of March, 2024 / 07 th day of Chaithra, 1945
OS 152/2021

Plaintiff	1	Thomas Mathai, Aged 81 Years, S/O Mathai, Vadasseril House, Chettukuzhy Kara, Kochara P O., Anakkara Village, Udumbanchola Taluk.
Additional Plaintiffs	2	Annamma, Aged 80 Years, W/O Late: Thomas, Vadasseril House, Chettukuzhy Kara, Anakkara Village.
	3	Mathew, Aged 47 Years, S/O Late: Thomas, Vadasseril House, Chettukuzhy Kara, Anakkara Village.
	4	Remino, Aged 50 Years, D/O Late: Thomas, Vadasseril House, Chettukuzhy Kara, Anakkara Village.
	Additional Plaintiffs 2 to 4 impleaded as per Order in IA 04/2023 dated 23.11.2023.	
	By Adv: A M Michael	
Defendant	:	Satheesh, Aged 51 Years, S/O Mathai, Vadasseril House, Chettukuzhy Kara, Kochara P O., Karunapuram Village, Udumbanchola Taluk.
	By Adv: Jiby Sebastian	

This suit is filed under Section 26, Order VIII, Rule 1 of the Civil Procedure Code and coming before me for hearing on 26.03.2024 and having been stood over for consideration till 27.03.2024 in the presence of the above counsel and the Court on the same day delivered the following :

JUDGMENT

The suit is for a Decree of Permanent Prohibitory Injunction and other Incidental and Consequential Reliefs.

2. **Plaint averments in brief are as follows :-**

The plaintiff is the owner in possession and enjoyment of plaint schedule property having an extent of 95 Ares 80 Square Meter of land in Survey No: 500/4, 500/9 and 500/11 of Anakkara Village. He obtained title over the property through Patta No: 5454 dated 17.07.2017 issued in LA 10/17 by Special Tahasildar (LA), Nedumkandam. The plaintiff is an aged person and the day today affairs of the property have been managing through his labours. He is remitting Land Tax at Anakkara Village under TP No: 5419S. Most portion of the plaint schedule property is lying as a wet land and there are two ponds situated in the plaint schedule property. One pond is having 50 meters of width in each four side and other one is a small one. The plaintiff is using the water from the ponds for the irrigation of his other agricultural property including the plaint schedule property. The plaint schedule property is lying within well defined boundaries and it is well separated from the adjacent properties with visible boundaries. The northern boundary of the plaint schedule property is separated from that of the defendant's property by several concrete pillars.

3. The defendant is the son of the plaintiff's brother Mathai. The defendant is having some large extent of land on the northern side of the plaint schedule property. During the year 2020, soil from the defendant's property had been removed by the defendant for its illegal trade and after that the defendant's property is lying below the level of the plaint schedule property. Water from his property has been flowing near through the above mentioned small pond situated in the plaint scheduled property. Now it is learned that defendant has an idea to deviate the way of existing flow of water near to the big pond situated in the plaint schedule property by removing the mud portion in the northern side of the plaint schedule property. If the defendant do so, the pond constructed by the plaintiff will be destroyed. On 28.06.2021 defendant openly declared that he

will remove the mud portion near the pond situated in the plaintiff scheduled property to create a new water flow from the defendant's property. The defendant has no right or authority to trespass in to the plaintiff scheduled property or committing act waste therein. On 29.06.2021 the defendant had made an attempt to trespass into the plaintiff scheduled property with an intention to remove the mud to cut open a space for the water flow and attempt of the defendant was defeated by the timely intervention of the plaintiff and his labours. The plaintiff is entitled to get a decree restraining the defendant and person under him from trespassing into the plaintiff scheduled property and committing any act of waste therein. Now it is reliably learned that the defendant is making preparations to trespass into the plaintiff scheduled property with an intention to remove the mud to deviate the existing water flow through the plaintiff scheduled property. Hence the suit filed.

4. Though summons was served, the defendant did not file written statement. Hence he was set exparte.

5. Based on the pleading of the plaintiff, the following points arise for consideration :

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

6. The original plaintiff died and his legal representatives were impleaded as additional plaintiffs 2 to 4. The 3rd plaintiff was examined as PW1. Exts: A1, A1(a), A2 and A2(a) were marked. Exts: C1 and C1(a) were also marked.

7. **Point No: 1** :- Ext: A1 is the Photocopy of Patta No: 5454 marked subject to the production of original. Ext: A1(a) is the Original of Patta No: 5454. Ext: A2 is the Photocopy of Basic Tax Receipt dated 16.06.21. Ext: A2(a) is the Original Land Tax Receipt dated 22.12.17. Exts: C1 and C1(a) are Commission Report and Rough Sketch respectively.

8. The 3rd additional plaintiff was examined as PW1. He deposed in tune with the plaint averments. The Advocate who was acquainted with the signature of Advocate Commissioner was examined as PW2. The oral evidence of PW1 and PW2 remains uncontroverted and unchallenged. In the absence of any contra evidence, the oral evidence of PW1 and PW2 coupled with Exts: A1, A1(a), A2, A2(a), C1 and C1(a) proves the case of the plaintiff. Hence Point No: 1 is answered in favour of the plaintiff.

9. **Point No: 2** :- The plaintiff is entitled to the relief of permanent prohibitory injunction. Considering the facts and circumstances of the case, the plaintiffs are entitled to the costs of the suit.

In the result, the suit is decreed with costs as follows :-

The defendant and persons under him are restrained by a permanent prohibitory injunction from trespassing into the plaint schedule property or from removing the mud or committing any act of waste in the plaint schedule property.

Dictated to the Confidential Assistant, transcribed and typed by her, corrected and pronounced by me in Open Court on this the 27th day of March, 2024.

**FELIX JOHN,
MUNSIFF, KATTAPPANA**

APPENDIX

<u>Plaintiff's Exhibits :</u>		
A1	17.07.2017	Copy of Form of Patta No: 5454 issued by Tahsildar (LA), Nedumkandam
A1(a)	17.07.2017	Original Patta No: 5454 issued by Tahsildar (LA), Nedumkandam
A2	17.06.2021	Land Tax Receipt issued by Village Officer, Anakkara
A2(a)	22.12.2017	Land Tax Receipt issued by Village Officer, Anakkara
<u>Defendant's Exhibits :</u>		NIL
<u>Court Exhibits :</u>		
C1, C1(a)	18.07.2021	Commission Report and Rough Sketch filed by Adv: V S Abhilash
<u>Plaintiff's Witnesses :</u>		
PW1	14.02.2024	Mathew
PW2	23.03.2024	Kavery Muraleedharan
<u>Defendant's Witnesses :</u>		NIL
<u>Court Witnesses :</u>		NIL

MUNSIFF

Typed by : Syam M S
Compd. by : Lekha T S

FAIR JUDGMENT IN OS 152/2021
DATED: 27.03.2024.