

**IN THE COURT OF THE MUNSIFF-MAGISTRATE, PAYYOLI**

Present :- Sri. Mithun Roy K, Munsiff-Magistrate.

Monday, the 22<sup>nd</sup> day of August, 2022

**ORIGINAL SUIT NO.106/2018**

Between:-

1. **Chavattiparambil Baby Kamala,**  
W/o. (Late) Lakshmanan, Aged 63 years,  
Swastham, Kolaviyil House, Iringal Village,  
Iringal Desom, PO Kottakkal, (Via) Iringal,  
Koyilandy Taluk, Kozhikode District.
2. **Daughter Lisha Residing at Kolaviyil,**  
Aged 42 years, Swastham, Iringal Village,  
Iringal Desom, PO Kottakkal, (Via) Iringal,  
Koyilandy Taluk, Kozhikode District.
3. **Vattaparambil Deeshjith,**  
S/o. Gangadharan, Aged 57 years,  
Working at Infosys, C-50-3, Adarsh Residency 47,  
Cross, 8<sup>th</sup> Block, Jayanagar, Bangalore-70.  
Represented by Brother-in-law Anoop Kumar,  
S/o. Sankaran, Aged 50 years, Engineer,  
'Sush', Kacheri Village, East Hill, Kozhikode-673005.

Plaintiffs

And:-

1. **Shiju,**  
S/o. Nanu, Aged 38 years, Driver, Kolaviyil House,  
Iringal Village, Iringal Desom, P.O. Kottakkal,  
(Via) Iringal, Koyilandy Taluk, Kozhikode District.
2. **K T Ramesan,**  
S/o. Kelappan, Aged 52 years, Coolie,  
Koodathazha House, Iringal Village, Iringal Desom,  
P.O. Kottakkal, (Via) Iringal, Koyilandy Taluk,  
Kozhikode District.

Defendants

3. **Suresh Babu,**  
 S/o. Kalyani, Aged 56 years, Chriyaviyil,  
 Iringal Village, Iringal Desom, P.O. Kottakkal,  
 (Via) Iringal, Koyilandy Taluk, Kozhikode District. } Defendants

This suit coming on this the 3<sup>rd</sup> day of August, 2022 for final hearing before me. Sri. N K Parameswaran and Sri. Sathyan P Thampi are the Advocates for plaintiffs. Sri. Kunhabdulla P Perooli filed Vakalath for Defendants. Defendants not turned up. Name of defendants called absent set exparte. Today the court delivered the following.

### **J U D G E M E N T**

2. **The plaintiffs' case, in brief, is as follows:-** The plaint schedule item Nos. 1 and 2 properties belong to the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs *vide* settlement deed dated 13.12.2006. Likewise, the plaint schedule item Nos. 3 to 5 property belong to the 3<sup>rd</sup> plaintiff as per documents No.2733/2006 and 2734/2006. Since the 3<sup>rd</sup> plaintiff is now residing at Bangalore in connection with his job, his properties are now being looked after by one Mr. Anoop Kumar, who is the brother-in-law of the 3<sup>rd</sup> plaintiff. The 1<sup>st</sup> and 2<sup>nd</sup> defendants are having properties on the northern side of the pathway that runs through the eastern boundary of the plaint schedule item No.1. The 3<sup>rd</sup> defendant is the Municipal Councillor and also the helper of the 1<sup>st</sup> and 2<sup>nd</sup> defendants. The defendants had demanded the plaintiffs to surrender certain portion of their land to widen the path way through the eastern side of the plaint schedule properties. Since there are coconut trees in the said area, the plaintiffs had not consented for the same. Hence the defendants had threatened to trespass and form a road through the plaint schedule properties on 02.12.2018. So the suit has been filed to restrain the defendants and their men for causing any obstruction to the peaceful possession of the plaint schedule properties by the plaintiffs or from trespassing

and widening the existing path way through the plaint schedule properties or from committing any acts of waste in the plaint schedule properties.

3. **The Defendants had filed Written Statement contending, *inter alia*, as follows:-** The derivation of title of the plaintiffs over the plaint schedule properties is denied. The measurements and boundaries of the plaint schedule properties are incorrect and hence the plaint schedule properties cannot be identified. Barbed wire fencing was constructed on the eastern and southern boundaries of the plaint schedule item Nos.3 and 4 properties in an illegal manner by trespassing into the *purambok* land and the public path way. The plaintiffs had placed barbed wire fencing by trespassing into the common land. The allegation that the defendants had threatened to trespass into plaint schedule properties for widening the path way are false. No cause of action is there for the plaintiffs. Hence the defendants had prayed for the dismissal of the suit.

4. The issues settled in this case are as follows:-

- i. Whether the plaintiffs are entitled to seek for a decree of permanent prohibitory injunction as prayed for?
- ii. Reliefs and costs?

5. On the listed day, the defendants had remained *ex-parte*. Hence the 2<sup>nd</sup> plaintiff was examined as P.W.1 and Exts.A1 to A28 and Exts. C1 to C5 were marked.

6. Heard learned counsel for the plaintiffs.

7. **Issues (i) and (ii):-** These issues are considered together as they are inter related. P.W.1 gave evidence in tune with pleadings in the plaint. In

the proof affidavit filed in lieu of chief examination by P.W.1, she had also adduced evidence in support of I.A.4/2020 and I.A.10/2022 filed for prosecuting the defendants for the alleged violation of the injunction order in I.A.

8. The defendants had not turned up to dispute the contentions in the proof affidavit of P.W.1. The defendants had also not adduced any evidence in support of their pleadings in the written statement.

9. From the unrebutted evidence of P.W.1 coupled with Exts.A1 to A28 and Exts.C1 to C5, I am of the view that the plaintiffs are entitled for a decree of injunction to protect the plaint schedule properties from trespass and acts of waste there by the defendants. So the suit can be decreed with costs. These issues are answered accordingly.

**In the result,**

The suit is decreed with costs as follows:-

The defendants and their men are restrained by a decree of permanent prohibitory injunction from causing any obstruction to the peaceful possession of the plaint schedule properties by the plaintiffs or from trespassing and widening the existing path way through the plaint schedule properties or from committing any acts of waste in the plaint schedule properties.

(Typed, corrected and pronounced by me in open court on this the 22<sup>nd</sup> day of August, 2022 )

Sd/  
Munsiff-Magistrate,  
Payyoli.

**Plaintiffs witness examined:-** Nil

**Plaintiffs Exhibits:-**

- A1 10.09.1976 : Gift Deed No.1045/76 of SRO Payyoli.
- A2 13.12.2006 : Settlement Deed No.3409/2006 of SRO Payyoli.
- A3 12.08.2014 : Tax Receipt issued by V.O. Iringal.
- A4 18.09.2017 : Tax Receipt issued by V.O. Iringal.
- A5 07.10.2006 : Assignment Deed No.2733/2006 of SRO Payyoli.
- A6 07.10.2006 : Assignment Deed No.2734/2006 of SRO Payyoli.
- A7 01.01.2019 : Copy of FIR of Payyoli Police Station.
- A8 17.04.2019 : Copy of FIR of Payyoli Police Station.
- A9 13.06.2019 : Copy of Complaint placed before Payyoli Police Station.
- A10 13.06.2019 : Copy of FIR of Payyoli Police Station.
- A11 05.12.2019 : Copy of FIR placed before Payyoli Police Station.
- A12 06.12.2019 : Copy of Complaint placed before Superintendent of Police, Vatakara.
- A13 05.12.2019 : Mathrubhumi News Paper.
- A14 09.12.2019 : Madhyamam News Paper.
- A15 08.12.2019 : Malayala Manorama News Paper.
- A16 12.12.2019 : Mathrubhumi News Paper.
- A17 20.03.2020 : Photos (4 in Numbers).  
(Series)
- A18 20.03.2020 : CD of Exts.A13 to A16.
- A19 06.10.2020 : Copy of FIR of Payyoli Police Station.
- A20 28.11.2021 : Copy of FIR of Payyoli Police Station.
- A21 29.11.2021 : Mathrubhumi News Paper.

- A22 29.11.2021 : Madhyamam News Paper.
- A23 29.11.2021 : Malayala Manorama News Paper.
- A24 29.11.2021 : Deepika News Paper.
- A25 29.11.2021 : Kerala Koumudhi New Paper.
- A26 01.01.2022 : Copy of FIR of Payyoli Police Station.
- A27 09.12.2021 : Copy of order in WP(C) No.28303 of 2021 (K) of the Hon'ble High Court of Kerala.
- A28 22.12.2021 : Copy of order in WP(C) No.28303 of 2021 (K) of the Hon'ble High Court of Kerala.

**Defendants witnesses examined:-** Nil

**Defendants Exhibits:-** Nil

**Court Exhibits:-**

- C1 28.12.2018 : Sketch.
- C2 28.12.2018 : Commission Report.
- C3 01.10.2019 : Commission Report.
- C4 27.01.2020 : Commission Report.
- C5 03.12.2021 : Commission Report.

Sd/-  
Munsiff-Magistrate,  
Payyoli.

Fair/Copy of Judgement in  
OS 106/2018. Dated 22.08.2022