

IN THE COURT OF THE MUNSIFF, VATAKARA.

Present: Smt. Aiswarya T., Munsiff
Friday, the 27th day of September, 2024

ORIGINAL SUIT NO. 150/2017

Between:

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| <p>1. A.K. Chandran, S/o Krishnan, 66 years,
'Krishnalayam', Chorode amsom,
Chendamanagalam desom, Vatakara Taluk.</p> | } | Plaintiffs |
| <p>2. Uthakapoyil Kuniyil Kamala, W/o Chandran,
56 years, 'Krishnalayam', Chorode amsom,
Chendamangalam desom, Vatakara Taluk.</p> | } | |

And:-

<p>M.P. Padmini, D/o Appunnikurup, 65 years, Manager, Chendamangalam L.P. School, Chorode amsom, Chendamangalam desom, Chorode East post, Vatakara Taluk.</p>	}	Defendant
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This suit coming on the 23rd day of September, 2024 for final hearing before me in the presence of Sri. Dinesan K.P. and Smt. Shyni Dinesan, Advocates for the plaintiffs and of Sri. P. Divakaran and Sri. Ajay Ramath, Advocates for the defendant, reported no instruction and proceeded exparte and having stood over to this day for consideration, this Court delivered the following.

Counter Claim in OS 150/2017

Between:

<p>M.P. Padmini, D/o Appunnikurup, 65 years, Manager, Chendamangalam L.P. School, Chorode amsom, Chendamangalam desom, Chorode East post, Vatakara Taluk.</p>	}	Counter claim petitioner/ Defendant
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And:-

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| <p>1. A.K. Chandran, S/o Krishnan, 66 years,
'Krishnalayam', Chorode amsom,
Chendamanagalam desom, Vatakara Taluk.</p> | } | Counter claim respondents/
Plaintiffs |
| <p>2. Uthakapoyil Kuniyil Kamala, W/o Chandran,
56 years, 'Krishnalayam', Chorode amsom,
Chendamangalam desom, Vatakara Taluk.</p> | } | |

This Counter claim petition coming on the 23rd day of September, 2024 for final hearing before me in the presence of Sri. P. Divakaran and Sri. Ajay Ramath, Advocates for the Counter claim petitioner, reported no instruction and proceeded ex parte and of Sri. Dinesan K.P. and Smt. Shyni Dinesan, Advocates for the Counter claim respondents and having stood over to this day for consideration, this Court delivered the following.

J U D G M E N T

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

2. The plaint averments, in brief, are as follows:- The plaint A schedule item No.1 property belonged to the 1st plaintiff as per the assignment deed No.1022/1995 of SRO, Vatakara and the plaint A schedule item No.2 property belonged to the 2nd plaintiff as per assignment deed No.1021/1995, and they are enjoying the same by paying tax. Except the plaintiffs, defendant or no other person have any ownership or possession over the plaint schedule property. The north and west of the property in which Chendamangalam L.P school is situated, where the defendant is the manager, is item No.1 of plaint A schedule property. The southern boundary of the said school property is plaint A schedule item No.2 property. A shed has been constructed by the defendant encroaching on the eastern side of the plaint A schedule item No.1 property. It was constructed for school children to share porridge. The said construction has been done without the consent of the 1st plaintiff. Similarly, a flag pole has also been erected by the defendant in the plaint A schedule item No.1 property near the aforesaid shed without the consent and permission of the 1st plaintiff. The defendant has done the same illegally and after encroaching to the plaint A

schedule item No.1 property. Thus, the defendant has encroached upon the property shown as thak No.3 of plaint A schedule item No.1 property and has laid interlocking blocks of cement thereon. He also attached it to the site where the school building of the defendant stands. The defendant has trespassed on the property to which the defendant has no right. The area shown as thak No.3 of plaint A schedule item No.1 property has now been converted into the yard of the school of which the defendant is the manager. The defendant has no right in the said property. Only the 1st plaintiff is the legal owner of the said property. The defendant has committed trespass on 28.5.2017. The iron ladder to the first floor of the school building is unfairly placed in the plaint A schedule item No.1 property. It is illegal and encroachment on the right of the 1st plaintiff.

3. On 17.4.2016, the defendant constructed concrete pillars touching the property of the 2nd plaintiff without complying with the legal distance required by the Panchayat building rules from the northern boundary of the plaint A schedule item No.2 property. The construction of concrete pillars by the defendant is a violation of Rule 27 of the building rules. Moreover, the roof of the first floor has been constructed in such a way that it lean towards the plaint schedule item No.2 property. It is illegal and is not permissible. The Chorod Panchayat Secretary has not issued a plan or permission for the above construction works carried out by the defendant.

4. Further, the 1st defendant had constructed a latrine with the consent of the 2nd plaintiff at the north eastern corner of the plaint schedule item No.2 property. Taking into account the fact that the school does not have a toilet and the fact that she is a teacher in the said school, the 2nd plaintiff was given permission to construct the toilet subject to conditions. The 2nd plaintiff had allowed the defendant to build a toilet temporarily on the condition that the toilet

building constructed on her property would be demolished and removed after the school constructed its own toilet. The school now has its own toilet building. Hence, the defendant is liable to demolish and remove the toilet building constructed by her on the plaint schedule item No.2 property. When the said demand was raised before the defendant, the defendant did not take a favourable stand and kept prolonging the matter. Hence the defendant may be restrained by way of mandatory injunction to demolish and remove the shed illegally constructed by her in the plaint A schedule item No.1 property, the flag pole erected nearby, the iron ladder made to enter first floor, and the latrine constructed in the plaint schedule item No.2 property. Further, an order may be passed against the defendant to evict the thak No.3 in the plaint schedule item No.1 from the possession of the defendant and to give the same to the actual possession of the 1st plaintiff. The property shown as plaint B schedule is to be evicted from the defendant and has to be given to the possession of the 1st plaintiff. The defendant may be directed by way of a mandatory injunction to demolish and remove the building constructed in the defendant's possession illegally without keeping the distance required by law from the northern boundary of plaint A schedule item No.1 property and encroaching into the plaint A schedule item No.2 property. The property owned by the defendant is shown as plaint C schedule property. The defendant may also be restrained by an order of permanent prohibitory injunction from constructing the building in the plaint C schedule property without a plan and permit as per the Panchayat building rules. Hence the suit.

5. Though the defendant filed her written statement along with counter claim, the counsel for the defendant reported no instructions at the time of evidence. Hence, the defendant was proceeded ex-parte.

6. To prove the case of the plaintiffs, 1st plaintiff himself was examined as PW1 and Exts.A1 to A15 and Ext.C1 and C2 were marked.

7. Heard the learned Counsel for the plaintiff.

8. On a perusal of plaint, proof affidavit and documents submitted the claim of the plaintiffs remain unchallenged and undisputed. Since the defendant is proceeded ex-parte, the case of the plaintiffs remain unchallenged. Hence the suit is decreed as follows:-

1) The defendant is directed by a decree of mandatory injunction to demolish and remove the shed, the flag pole erected nearby, encroaching into the plaint A schedule item No.1 property and the iron ladder used to enter to the first floor of the school building in the C schedule. The defendant is also directed to demolish and remove the latrine constructed in the plaint A schedule item No.2 property.

2) The plaint B schedule property is to be evicted by the defendant it is to be given to the actual possession of the 1st plaintiff.

3) The defendant is also directed by way of a mandatory injunction to demolish and remove the building constructed in the defendant's possession illegally without keeping proper distance required as per law from the northern boundary of the plaint A schedule item No.1 property and encroaching into the plaint A schedule item No.2 property.

4) The defendant is restrained by a decree of permanent prohibitory injunction from constructing the building in the plaint C schedule property without a plan and permit as per the Panchayat building rules.

In the result, the suit is decreed with costs and counter claim is dismissed.

(Dictated to C.A, typed by him in Office Computer, corrected and pronounced by me in Open Court, on this the 27th day of September, 2024)

Sd/-
MUNSIFF, VATAKARA.

Plaintiff's Witness :

PW1 23.09.2024 : A.K. Chandran, S/o Krishnan C.H.

Plaintiff's Exhibits:

- A1 02.05.1995 : Assignment deed executed by Janaki Amma and others in favour of plaintiff No. 1.
- A2 02.05.1995 : Assignment deed executed by Janaki Amma and others in favour of plaintiff No. 2.
- A3 22.07.2017 : Tax receipt issued by Village Officer, Chorode Village Office.
- A4 22.07.2017 : Tax receipt issued by Village Officer, Chorode Village Office.
- A5 04.01.2023 : Attested copy of building permit issued by Chorode Grama Panchayath.
- A6 - : Copy of application filed by defendant for building construction.
- A7 01.12.2012 : Tax receipt issued by Village Officer, Chorode Village Office.
- A8 04.11.2013 : Tax receipt issued by Village Officer, Chorode Village Office.
- A9 25.06.2014 : Tax receipt issued by Village Officer, Chorode Village Office.
- A10 10.07.2015 : Tax receipt issued by Village Officer, Chorode Village Office.
- A11 17.06.2016 : Tax receipt issued by Village Officer, Chorode Village Office.

- A12 09.10.2018 : Tax receipt issued by Village Officer, Chorode Village Office.
- A13 02.04.2019 : Tax receipt issued by Village Officer, Chorode Village Office.
- A14 20.06.2023 : Tax receipt issued by Village Officer, Chorode Village Office.
- A15 20.06.2023 : Tax receipt issued by Village Officer, Chorode Village Office.

Defendant's Witness : NIL

Defendant's Exhibits : NIL

Court Witness : NIL

Court Exhibits

- C1 25.03.2023 : Commission report submitted by Sri. K. Lal Mohan, Advocate Commissioner.
- C2 25.03.2023 : Commission plan submitted by Sri. K. Lal Mohan, Advocate Commissioner.

Sd/-

MUNSIFF, VATAKARA.