

IN THE COURT OF THE PRINCIPAL SUB JUDGE, KOLLAM

Present : Sri. Kenneth George, M.A, LL.B., Principal Sub Judge

Tuesday, the 19th day of August, 2014/28th day of Sravana, 1936.

O.S. 292/2013**Between**
Plaintiff:

Mr. Victor Cletus, aged 51 years,
S/o. Pathrose, Viju Vilasam,
Perayam, Kundara, Kollam District.

(By. Adv. S. Sreekumar)

And
Defendants:

- 1 Lalkumar, aged 40 years,
S/o. Karuthakunju, residing at Abhiramil,
House No.311, Perayam Panchayath,
Mulavana P. O, Kundara- 691503.
- 2 Smt. Rajalekshmi, aged 36 years,
W/o. Lal Kumar, residing at Abhiramil,
House No.311, Perayam Panchayath,
Mulavana P. O, Kundara- 691503.
- 3 Smt. Aswathy, aged 28 years,
D/o. Omana, residing at Abhiramil,
House No.311, Perayam Panchayath,
Mulavana P. O, Kundara- 691503.

(By. Adv. R. Mohana Babu)

- 4 Mr. Prem Kumar, aged 49 years,
Preetha Bhavan, Karuvelil P. O,

Edavattom cherry, Pavithreswaram Village,
Kottarakkara Taluk, Kollam District.

This suit coming on for hearing before me on 19-08-2014 and court on the same day delivered the following.

JUDGMENT

The suit is for permanent prohibitory injunction restraining defendants and their men from trespassing into plaint schedule property or disturbing peaceful possession. The plaint is amended as per order in IA 190/14 dated 03.06.2014 seeking mandatory injunction directing the defendants to vacate the plaint schedule property.

2. The plaintiff's case in nut-shell is that the plaintiff got title to plaint schedule property vide sale deed No.34046/09 of Kundara SRO, executed by defendants 1 to 3. Though plaintiff on 31.03.2010 executed sale agreement with 4th defendant, the agreement became infructuous as the advance consideration paid by way of cheque dishonoured due to insufficient funds.

3. The defendants 1 to 3 filed associate written statement contending that the sale deed No.3404/09 is only a security for payment of 3.5 lakhs with interest. The plaintiff, a money lender is attempting to take property by practicing fraud. They are unaware

of execution of sale agreement with 4th defendant. The 4th defendant did not file any written statement and remained exparte to proceedings. Though plaint is amended, no additional written statement was filed.

4. On the basis of rival pleadings, the following issues were settled for trial:

1. Whether defendants 1 to 3 proved that Sale deed No.3404/09 is only security for repayment of Rs.3.5 lakhs?
2. Whether plaintiff proved that he was dispossessed on 18.10.2010?
3. Whether the plaintiff proved title to plaint schedule property?
4. Whether plaintiff is entitled to mandatory injunction as prayed for?
5. Whether plaintiff is entitled to prohibitory injunction as prayed for?
6. Relief and Cost?

5. Issues No. 1 and 3

Ext.A1 is the Sale Deed No.3404/09 executed by defendants in favour of plaintiffs. Ext.A2 is the agreement executed with the 4th

defendant. Ext.A3 series tax receipts show that the plaintiff effected mutation in revenue returns. Ext.A4 is the cheque for Rs.50,000/- and Ext.A5 is the return memo. PW1 filed affidavit supporting of the averments in the plaint. PW1 is not seen questioned regarding his title to property. No evidence is let by the defendants regarding their claim that Ext.A1 is only a security document. As Ext.A1 is a registered sale deed, the defendants are estopped from adducing oral evidence against terms of Ext.A1. So, the plaintiff succeeded in proving title to plaint schedule property. The defendants failed to prove their claim of security document. The issues are answered in favour of plaintiff and against defendants.

6. Issue No.2

The grievance of the plaintiff is that in pursuance of Ext.A1, the possession is delivered to him and he effected construction of compound walls. However, in convenience with police officials, the defendants 1 to 3 took possession of the property on 18.10.2010. The cause of action is not seen questioned. So, the plaintiff succeeded in proving cause of action. The issue is answered in favour of plaintiff.

7. Issue No.4

As the plaintiff proved title and valid cause of action, plaintiff is entitled to mandatory injunction. There is nothing to show that

the defendants 1 to 3 assumed possession legally. As they are trespassers, plaintiff is entitled to mandatory injunction to evict them from the plaint scheduled premises. The issue is answered in favour of plaintiff.

8. Issue No.5

It is true that originally the suit filed was for injunction simplicitor. Now, it is seen that the defendants 1 to 3 forcefully resumed possession. So, plaintiff is entitled to permanent prohibitory injunction against disturbing the peaceful possession. The issue is answered in favour of plaintiff.

9. Issue No.6

In the result, the suit is decreed as follows:

The defendants 1 to 3 are directed to vacate the plaint schedule property within 1 month from today. Failing which, the plaintiff is entitled to execute the decree through the court. There is a decree of perpetual prohibitory injunction restraining defendants 1

to 3 from disturbing peaceful possession of plaintiff over plaint schedule property. The plaintiff is also entitled to cost of litigation.

Dictated to the Confidential Assistant, transcribed and typed by her, corrected by me and pronounced in open court on this the 19th day of August, 2014.

Sd/-
KENNETH GEORGE
Principal Sub Judge.

APPENDIX :
Exhibits for the plaintiff

A1	-	17-08-2009	-	Original sale deed No.3404.
A2	-		-	Agreement.
A3(s)-			-	Tax receipts.
A4	-	31-03-2010	-	Cheque.
A5	-	16-09-2010	-	Return memo.

Exhibits for the defendants - Nil

Witness for the plaintiff

PW1 - 05-08-2014 - Victor Cletus.

Witness for the defendants - Nil

Id/-
Prl. Sub Judge.

Typed by: Vinod. G
Compd by:

Kenneth George
Principal Sub Judge.