

IN THE COURT OF MUNSIFF PUNALUR.

Present :- Sri.S.Sudheeshkumar, B.Sc,L.L.B. Munsiff.

Saturday the 19th day of September, 2015/28th Bhadra,1937**OS. 428/2012**BetweenPlaintiff:-

Aravindakshan Unnithan, S/o. Raghavan Unnithan, aged 55, Vishariyil Puthen veedu, Pandithitta, Ambalathi nirappu P.O. Thalavoor muri, Thalavoor village, Pathanapuram

(By Adv.B. shamnad)

AndDefendant:-

Gopalakrishnan Unnithan, S/o. Raghavan Unnithan, aged 64, Vishariyil Puthen veedu, Pandithitta, Ambalanirappu P.O. Thalavoor muri, Thalavoor village, Pathanapuram

(By Adv.B. Pratheep kumar)

Counter Claim Petitioner/Defendant:-

Gopalakrishnan Unnithan, S/o. Raghavan Unnithan, aged 64, Vishariyil Puthen veedu, Pandithitta, Ambalathinnirappu P.O. Thalavoor muri, Thalavoor village,

(By Adv.B. Pratheep kumar)

Counter claim Respondent/Plaintiff:-

Aravindakshan Unnithan, S/o. Raghavan Unnithan, aged 55, Vishariyil Puthen veedu, Pandithitta, Ambalathinnirappu P.O. Thalavoor muri, Thalavoor village,

(By Adv.B. shamnad)

This suit and Counter claim is coming on for hearing before me on 19-09-2015 and the same day the court passed the following.

JUDGMENT

1. Suit is for declaration of easement right, decree of permanent prohibitory injunction and other ancillary relieves.
2. Plaintiff allegation can be summarized as follows:-

Plaintiff acquired plaintiff A' schedule property by virtue of partition deed

No.2329/74 of Pathanapuram SRO. B' schedule is the pathway commencing from Ambalanirappu – Pattazhy NSS Jn. Road and ends at the south eastern portion of A' schedule property. Plaintiff B' schedule property belong to defendant situate on the western side of B' schedule pathway and south of A' schedule property. Plaintiff perfected right of easement by prescription over plaintiff B' schedule pathway. On 08.10.12 defendant obstructed B' schedule pathway by dumping waste and mud therein. He threatened that he will close B' schedule pathway. Hence the suit.

3. Defendant filed written statement with counter claim. The averments in the written statement and counter claim can be summarized as follows.

Suit is not maintainable either under law or on facts. Plaintiff schedule descriptions are wrong. There is no record to reveal exact dimensions of pathway as narrated in the plaint. Plaintiff has got direct access to Ambalanirappu – NSS Cashew factory – Pattazhy road. The plaint allegation that he has no other way to have an access to public road is false. Plaintiffs suppressed existence of direct access to western public road from his property. There is no right of easement exist in favour of plaintiff. The partition deed No.2329/1974 does not reveal existence of pathway as alleged in the plaint. Plaintiff cannot claim right of way permitted by defendant as a matter of right. There is no dominant and servient heritage. Plaintiff do not have cause of action against defendant. Same is revealed from commission report which do not contain the alleged obstruction made by defendant in the B' schedule pathway. Defendant pressed for dismissal of the lis. According to defendant on 12.11.12 plaintiff and DYFI activists entered in to property belong to defendant and widened

pathway. Counter claimant pressed for fixation of boundary of counter claim schedule property on the basis of title deed and revenue records. He also pressed for permanent prohibitory injunction not to trespass in to counter claim schedule property and not use pathway for the ingress and agrees of counter claim defendant. Plaintiff filed replication denying counter claim allegation and reiterating plaint averments.

4. Heard both sides . Following issues settled in this case are

1. Whether plaintiff is entitled for decree of declaration of easement by prescription over plaint B' schedule pathway?
2. Whether plaintiff are entitled for decree of permanent prohibitory injunction as prayed for?
3. Whether counter claimant is entitled to get a decree to fix boundaries of counter claim schedule property as prayed for?
4. If so through what line?
5. Whether counter claimant is entitled for decree of permanent prohibitory injunction as prayed for?
6. What is the order as to cost?

When the case was enlisted for trial on 07.09.2015 as there was no sitting matter adjourned to 15.09.15. On that date plaintiff did not appear before court. Suit dismissed for default. Defendant filed chief affidavit and produced no documents. Admittedly defendant did not file application to depute commissioner and surveyor to measure out his property and to fix its boundary line on the basis re survey records and title deed. Hence relief A' sought is disallowed. On the strength of chief affidavit

counter claimant established counter claim allegation. In the light of unchallenged version I am of the view that counter claim can be allowed as follows.

1. Counter claim defendant is hereby restrained by decree of permanent prohibitory injunction from trespassing in to counter claim schedule property and from committing any waste therein.

Dictated to the Confidential Assistant transcribed and typed by her, revised and corrected by me and pronounced in Open Court on this the 19th day of September, 2015.

Sd/-
Sudheesh Kumar. S,
Munsiff

Appendix:- NIL.

Id/-
Munsiff

//True Copy//

Typed by : Bindu.S
Compd by :

Munsiff