

IN THE COURT OF THE MUNSIFF, PUNALUR
PRESENT :-Smt. Reshma.R.S, Munsiff.
Friday the 7th day of June 2024/ 17th day of Jyeshtha, 1946.

OS 533/2018

Between

- Plaintiffs** : 1. Muraleedharan, aged 62 years, S/o Narayanan, Krishna Vilasam, Poovannam Moodu, Piravanthoor Muri, Piravanthoor Village, Pathanapuram Taluk.
2. Latha, aged 52 years, W/o Muraleedharan, Krishna Vilasam, Poovannam Moodu, Piravanthoor Muri, Piravanthoor Village, Pathanapuram Taluk.

(By Adv. Y. Joykutty)

And

- Defendants**: 1. Chellapanachari, aged about 65 years, S/o Krishnanachari, Kizhakkekkara Puthen Veedu, Poovannam Moodu, Piravanthoor Muri, Piravanthoor Village, Pathanapuram Taluk.
2. Devu, aged about 60 years, W/o Chellappanachari, Kizhakkekkara Puthen Veedu, Poovannam Moodu, Piravanthoor Muri, Piravanthoor Village, Pathanapuram Taluk.
Addl. D3. Bindhu, aged about 34 years, D/o Chellappanachary, Kizhakkekkara Puthen Veedu, Poovannam Moodu, Piravanthoor Village, Pathanapuram Taluk.

Impleaded as per order in IA 1339/2019 dated 09.11.2022

(Ex-parte)

This suit is coming on for final hearing before me on 01.06.2024 and stood over for consideration to 07.06.2024 and on the same day Court delivered the following.

JUDGMENT

Suit for permanent prohibitory injunction.

2. **The plaint averments, in brief, are as follows:** - The 1st plaintiff purchased the plaint 1st schedule property by virtue of deed

No. 1658/96 and the 2nd plaintiff purchased the plaint 2nd schedule property by virtue of deed No. 1582/06. Since then, they are in possession and enjoyment of their properties and land tax being remitted. They are cultivated in plaint schedule properties. The plaint 1st and 2nd schedule properties are lying as a single compact plot. Initially the plaint 1st and 2nd schedule properties were wet land but years ago, the said properties were filled with soil and rubber trees were cultivated therein. In the plaint 1st and 2nd schedule properties there are coconut trees having age of 40 years, rubber trees having age of 20 years and some other trees. The defendants have no right or authority over the plaint schedule properties. The defendants are the owners of a portion of the property lying to the north of a small stream to the northern side of the plaint 1st and 2nd schedule properties. The defendants have shop room on the southern side of the Punalur - Kayamkulam road. The defendants used to reach their property through the eastern side of the said shop room. Coconut trees and albizia are standing in the defendants property. The access to the plaint 1st and 2nd schedule properties were by using the panchayath road situated on the southern side of the Kayamkulam - Punalur road. Also, the southern stream situated on the property of the 2nd plaintiff was also needs to be crossed for reaching the schedule properties. Due to the difficulty caused to the

plaintiffs to reach their properties, they constructed a slab over the said stream and installed a gate. The said road having age of about 5 years. Even at that time the defendants did not use any portion of the plaintiff 1st and 2nd schedule properties for ingress and egress to their properties. They did not have any need for the same. The defendants property is situated on the southern side of the Punalur - Kayamkulam road and their shop room is also situated on the southern side. For the protection of the said shop room, the defendants themselves close down the pathway on the eastern side of the same. The defendants have been harassing the plaintiffs in various ways for a long time. The defendants filed a suit as OS 260/01 regarding the property separated by the stream but this court dismissed the said suit. Later on 10/08/2018, the 2nd defendant submitted a false complaint before the Pathanapuram Tahsildar for constructing a pathway through the plaintiffs property. The report regarding the same is false. The report of the Village Officer dated 01/10/18 is also false. The defendants have no right to cut out any new pathway through the plaintiffs' property or to use the pathway owned by the plaintiffs. If the defendants succeed in their attempt, it will cause irreparable injury and hardships to the plaintiffs. From the southern side ridge, the 1st plaintiff has pathway to his property up to the north. Now the defendants are trying to cut

open a new pathway through the plaint 1st and schedule property. The plaintiffs are not able to prevent the defendant from committing the aforesaid illegal acts. The plaintiffs are residing far away from the plaint 1st and 2nd schedule properties. Hence, this suit.

3. **The 2nd defendant filed written statement contending the following:** - The suit is not maintainable either in law or on facts. The plaintiffs filed this suit by suppressing material facts. The plaintiffs have no right to seek any relief. The description of the plaint 1st and 2nd schedule properties are false. The plaintiffs filed this suit after encroaching the stream, ridge and 7 feet links pathway on the western side of the plaint 1st schedule property and eastern side of the 2nd schedule property by filling it with soil. The plaint schedule properties are wet lands. The defendants have no property on the northern side of the plaint 1st or 2nd schedule properties. It is true that the defendants have shop on the southern side of Punalur Kayamkulam Road. But there is 1/2 km distance between the shop and the property of the defendants. On the southern side of the defendants property some alcacia are planted with the intention to protect the cultivation of small crops like banana and vegetables from the rubber trees standing in the plaintiffs property. But due to the filling up of soil in the plaint schedule properties and in the east-west stream by the plaintiffs,

169 numbers of banana trees and vegetables were damaged by the over flow of water through the defendants property and thereby the defendants loss to the tune of Rs. 98,000/-. The road on the southern side of the plaint 1st and 2nd schedule properties is a newly constructed one. Before that, there was a stream and ridge. The side wall has been built and filled up with soil for the road. The defendants have access their property from the road on the southern side of their property through the ridge at the eastern side of the plaint schedule property. The defendants have every right to use the said pathway to reach their property. It is false to state that the defendants did not use to access the plaint 1st and 2nd schedule properties. The defendants never caused any hurt to the plaintiffs. The 1st defendant in this case filed a suit against the 1st plaintiff in this case as OS 260/01 as the 1st plaintiff in this case constructed an embankment by filling up the stream situated on the northern side of his property and by encroaching the property of the 1st defendant in this case. But the said suit was dismissed for the non-appearance of the plaintiff. There is no pathway on the eastern side of the defendants shop room. On 10/08/2018, the defendants lodged a complaint before the Tahsildar, Pathanapuram, as the plaintiffs caused obstruction for the access to the defendants' property by installing a gate. The defendants have no need to cut

open a new pathway through the plaint 1st and 2nd schedule properties. But the defendants have every right to use the ridge on all sides of the said properties. The plaintiffs have no right to obstruct the same. The plaintiffs have concealed the fact that the ridge on the eastern side of the plaint schedule properties was constructed as part of Kallada Irrigation Project. As part of the said project, the shutter across the ridge on the eastern side of the plaint 1st schedule property has been removed and the embankment has been partially removed. The 2nd defendant, who is the retired Senior Special Assistant of the State Bank. The 1st defendant voluntarily retired from service. The plaintiffs have no cause of action to institute the suit. The plaint is to be rejected as the dates of cause of action are imaginary. The plaintiffs have no prima facie case. Balance of convenience is in favour of the defendants. If the injunction is allowed, the same will cause irreparable injury and hardships to the defendants. Hence the suit is liable to be dismissed with costs.

4. The 3rd defendant adopted the written statement filed by the 2nd defendant in this case. The 1st defendant died on 24/04/2019 and thereafter the legal heirs of the 1st defendant was impleaded as additional 3rd defendant as per order in IA 1339/2019.

5. From the rival contentions, the following issues were framed for consideration:

1) Whether the plaintiffs are entitled to get a decree of permanent prohibitory injunction as prayed for

2) Relief and costs?

6. The case was listed for trial on 01/06/2024, and on that day, the defendants 2 and 3 were absent. Hence, this court ordered to proceed with the case against the defendants 2 and 3 ex-parte.

7. To prove the case of the plaintiff, PW1 and PW2 were examined and Exts. A1 to A9 and Exts.C1 series documents were marked.

8. Heard. Perused all the available records.

9. **Issues Nos. 1 to 4:** - These issues are considered together for convenience and to avoid repetition of facts. The learned counsel for the plaintiff argued that the plaintiffs are entitled to get a decree as prayed for. The Hon'ble High Court of Kerala, in **T. Sheeja v. C.P. Balakrishnan** reported in **2018 (4) KLJ 395**, held that; *“even in a case where the defendant is set ex-parte, the judgment shall reflect the facts of the case and the controversy involved and tried to be settled by the court.”*

10. Bearing in mind the above decision, I have gone through the entire evidence on record. PW1, the 1st plaintiff, filed affidavit in lieu

of the examination-in-chief reiterating the plaint averments. According to PW1, he purchased the plaint 1st schedule property by virtue of deed No. 1658/96 and the 2nd plaintiff purchased the plaint 2nd schedule property by virtue of deed No. 1582/06 and since then they are in possession and enjoyment of their properties. PW1 stated that the plaint 1st and 2nd schedule properties are lying as a single compact plot. PW1 produced the deed No.1658/96 and the same is marked as Ext. A1 and the land tax receipt dated 01/06/2018 is marked as Ext. A2. PW1 produced the deed No. 1582/06 and the same is marked as Ext. A3 and the land tax receipts dated 01/06/2018 is marked as Ext. A4. The true copy of the reply submitted by the plaintiffs before the Taluk Tahsildar Pathanapuram is marked as Ext. A5. The land tax receipts dated 27/05/2023, 30/10/2023, 15/04/2024 and 17/04/2024 are marked as Exts. A6, A7, A8 and A9 respectively. The report of the advocate commissioner, Exts.C1 series, was also marked through PW1. PW2, the 2nd plaintiff, filed affidavit in lieu of examination-in-chief and reiterated the plaint averments. PW2 deposed before the court that the plaintiffs constructed a concrete slab across the stream, and that there is no pathway to reach the property of the defendants through the plaint schedule properties. The oral and documentary evidence adduced from the side of the plaintiffs substantiate the

case of the plaintiffs. Even though the defendants took a contention that they have right to use the ridge situated in the plaint 1st and 2nd schedule properties owned by the plaintiffs, they chose to remain ex-parte. Nothing on the record casts a shadow of doubt on the right of the plaintiffs over the plaint schedule properties.

11. In this case, the evidence adduced from the side of the plaintiffs are unchallenged. The advocate commissioner deputed in the case has visited and identified the plaint schedule properties on 21/12/2018 and it is reported that the plaint 1st and 2nd schedule properties are lying together as a single compact plot. She also reported that the defendants property is situated on the northern side of the plaint schedule properties, the property of Chacko is situated on its western side, the property of Raveendran on its eastern side and panchayath road is situated on its southern side. She also reported that the slab used to access the plaint schedule properties are having age of about 4 years and the gate having age of about 2 years. She has reported that on the southern side, the plaint schedule properties are situated at a depth of 5 feet from the panchayath road. The oral and documentary evidence of PW1 and PW2 shows that the plaintiffs are entitled to get a decree as prayed for. There is no evidence to the contrary. The general rule is that costs shall follow the event. But considering the nature of the

proceedings, there shall be no order as to costs. Hence, all the issues are answered accordingly.

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

- a) The defendants are restrained by way of a permanent prohibitory injunction from trespassing upon the plaint schedule properties, from causing any damage to the gate and slab, from cut open any new pathway by encroaching any portion of the plaint A and B schedule properties, from committing any sort of damages therein, and also from causing any obstructions to the peaceful possession and enjoyment of the plaintiffs over the plaint schedule properties.
- b) There shall be no order as to cost.

(Dictated to the Confidential Assistant, transcribed and typed by her, corrected and pronounced by me in open court on this the 7th day of June 2024)

Sd/-
Munsiff

Appendix

Witness for the plaintiff

PW 1	-	01.06.2024	-	N.Muraleedharan
PW 2	-	01.06.2024	-	Reghunadhan

Exhibits for the plaintiff

A1	-	16.05.1996	-	Sale deed No. 1658/96
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A2	-	01.06.2018	-	Land tax receipt issued by Piravanthoor Village Office
A3	-	04.07.2006	-	Sale deed No. 1582/2006
A4	-	01.06.2018	-	Tax receipt issued by Piravanthoor Village Office
A5	-	19.12.2018	-	The true copy of the reply submitted before the Taluk Tahsildar Pathanapuram
A6	-	27.05.2023	-	Land tax receipt issued by Village Office, Piravanthoor
A7	-	30.10.2023	-	Land tax receipt issued by Village Office, Piravanthoor
A8	-	15.04.2024	-	Land tax receipt issued by Village Office, Piravanthoor
A9	-	17.04.2024	-	Land tax receipt issued by Village Office, Piravanthoor.

Court Exhibits

C1	-	05.01.2019	-	Report submit by commissioner Advocate Manjula B. Nair
C1 (a)	-	21.12.2018	-	Mahazar prepared by commissioner Advocate Manjula B. Nair
C1 (b)	-	-	-	Rough sketch prepared by commissioner Advocate Manjula B. Nair

Id/-
Munsiff

//True Copy//

Typed by : Sreeja Sarojam S

Compared by :

MUNSIFF

