

IN THE COURT OF THE SUBORDINATE JUDGE, KOTTARAKKARA

Present:- Sri. Sandeep Krishna. V, Sub Judge

On Wednesday, the 06th day of December, 2023/15th Agrahayana, 1945.

O. S. 17/2017

Between

Plaintiff:-

Kunjappy Reji, aged 35 years, resides at
Asariazhikathu Kizhakkathil Veedu,
Pulamon Muri, Mylom Village,
Kottarakkara Taluk.

By Advocate: Sri.R. Krishnakumar .

And

Defendant:-

Kunjupillai Santhoshgi, aged 43 years,
resides at the Thenguvila Rajadhani Veedu,
Ambalakkara Muri,
Valakom Village,
Kottarakkara Taluk.

By Advocate: Sri.M. Devesh

The Suit is filed under Section 26, Order VII, Rule 1 of the Code of Civil Procedure for a declaration of title and possession and also for an injunction restraining the defendant from trespassing in to the plaint schedule property coming on for hearing before me on 04/12/2023 and having stood over for consideration to this day the court delivered the following:-

JUDGEMENT ON ADDITIONAL ISSUE NO: 4

Suit for declaration of title and possession and for a consequential perpetual injunction against the defendant.

2. **Plaintiff filed the suit stating the following facts:-** Plaintiff had purchased the plaint schedule property through sale deed No.34/2013 registered at the Additional Sub Registry, Kottarakara. He got title and possession thereby and has been in possession of the plaint schedule property since the date of the said sale deed. He also effected mutation. The defendant who is the relative of the executant of the sale deed had demanded the plaint schedule property for a very low price and the executant of the sale deed had rejected the demand of the defendant and thereafter sold the plaint schedule property to the plaintiff. On 04/01/2013 the defendant tried to obstruct the plaintiff from taking yield from the plaint schedule property. Due to the resistance of the plaintiff the defendant could not succeed. The plaintiff filed a complaint before the Sub Inspector of Police, Kottarakara on 05/01/2013. Thereafter on 09/01/2013 in the presence of Sub Inspector of Police, Kottarakara, the defendant agreed to purchase the plaint schedule property by paying an amount of Rs. 17,00,000/-to the plaintiff on or before 15/02/2013. An agreement was also executed in this regard. The defendant was however not ready and willing to purchase the plaint schedule property. Even then he sent a lawyer notice stating that he is ready to execute the sale deed on 28/02/2013. The plaintiff was present at the Sub Registry on the said day and the defendant did not turn up and did not execute the sale deed. On 01/03/2013 the defendant along with some anti social elements tried to obstruct the labourers who were working in the plaint schedule property. The plaintiff could obstruct the defendant. The defendant then threatened that he would demolish the barbed wire fencing installed in the boundaries in the plaint schedule property. The plaintiff also got reliable information that the defendant is making preparations to demolish the boundary barbed wire fencing and to trespass into the plaint schedule property. Therefore the plaintiff filed the suit against the defendant seeking declaration of title and

possession over the plaint schedule property and for a consequential perpetual injunction to restrain the defendant from trespassing into the plaint schedule property, obstructing the peaceful possession and enjoyment of the plaint schedule property by the plaintiff and from restraining the defendant from destroying the boundary barbed wire fencing and further committing any waste in the plaint schedule property.

3. Defendant filed written statement denying the plaint averments and stating the following facts:- The suit is not maintainable either in law or on facts. The claim of the plaintiff that he is in possession of the plaint schedule property is absolutely false. The defendant is in absolute possession and enjoyment of the plaint schedule property. The plaint schedule property was part of the larger extent of 2.45 acres property which belonged to late Kunjupillai, the father of the defendant. Kunjupillai had given 52 cents of the said property to his son named Sasidharan. Sasidharan later executed a sale deed in respect of 20 cents from out of that 52 cents in favour of Vimala who was the wife of the second son of Kunjupillai named Prabhakaran. This document is deed No. 2508/1980. Even though such sale deed was executed, the entire 2.45 acre property continued to be in the actual possession and enjoyment of Kunjupillai till his death on 22/09/2004. In the mean while Vimala Devi who obtained title to 20 cents through deed No.2408/1980 was indebted to several persons. The creditors began to take action for realisation of their amounts. As requested and compelled by the said Vimala Devi and to protect the property from going out of the family, the defendant paid the debts and got reconveyance of the property in the name of Vimala Devi. Even though the payment to the creditors was made by the defendant the reconveyance was got in the name of Vimala Devi. An equitable title was created in favour of the defendant. Like the father Kunjupillai, the defendant continued to possess the plaint schedule property. The land tax of the plaint

schedule property was paid by Kunjupillai and later by the defendant. The defendant made valuable improvements in the plaint schedule property by expending large amounts of money. He put up barbed wire fencing on all sides of the property. He also put up and finished the foundation basement and also dug a well in the plaint schedule property. The defendant is in exclusive possession of the plaint schedule property and is in enjoyment of the said property. Mean while Vimala Devi executed settlement deed No. 2469/2012 in favour of her daughter named Divya. Divya later executed sale deed No. 34/2013 in favour of the plaintiff. In the settlement deed and the subsequent sale deed it was falsely stated that the plaint schedule property was in the possession of Divya. On the basis of sale deed No. 34/2013, the defendant on many occasion tried to trespass into the plaint schedule property. On all those occasions, the defendant prevented the trespass and continued his actual physical possession and enjoyment of the plaint schedule property. The plaintiff then approached police authorities by filing complaint against defendant. In the presence of the Sub Inspector plaintiff and the defendant entered into an agreement for sale by which the defendant agreed to purchase the plaint schedule property with the foundation basement and the improvements for a sum of Rs.17,00,000/- . On 15/02/2013 even though all preparations including the draft sale deed were prepared and the plaintiff and defendant went to the Sub Registry, the defendant left the place for reasons known to him alone while the defendant was counting the money for the purchase of the stamp paper. Therefore the sale deed could not be executed. In the said circumstance the defendant issued a lawyer notice on 19/02/2013 directing the plaintiff to be prepared to get the sale deed executed and registered in the name of the defendant on 28/02/2013. The defendant was ready and willing to pay the sale consideration of Rs. 17,00,000/- and he was present at the Sub Registry from 10 am on wards. The lawyer notice sent by the defendant to the plaintiff is replied stating false facts. He replied that if

the defendant comes to the Sub Registry on 28/02/2013 with Rs. 17,00,000/- and another Rs.50,000/- as compensation he would execute the sale deed. Thus the period for execution of sale deed got extended from 15/02/2013 to 28/02/2013 with no attached conditions. The defendant later filed OS 84/2013 before the Sub Court, Kottarakara.

4. After considering the rival contentions, the court settled the following issues for trial:

1. Whether the plaintiff's title and possession over the plaint schedule property is allowable?
2. Whether the prayer for perpetual injunction is allowable?
3. What is the order as to costs?

5. As per judgement in OP (C) No. 565/2014 before the Honourable High Court of Kerala, Additional Issue No. 4 was framed.

Additional Issue No. 4 – Is the suit properly valued and sufficient court fee paid ?

Additional issue No. 4 was taken as preliminary issue and it was heard. Against the order in Additional Issue No. 4 the defendant filed OP (C) 1637/2023. As per the judgement in OP (C)1637/2023 before the Honourable High Court of Kerala, Additional Issue No. 4 is heard again.

6. **Additional Issue No. 4:-** At paragraph No. 12 the plaintiff states about court fee and valuation and it reads “ The annual income of the property is Rs. 210/- . Annual tax is Rs. 10. After deducting the annual tax, the annual income is Rs. 200/-. So the market value of the plaint schedule property is 10 times of annual income. ie. Rs. 2000/- . As per Section 25 (b)

of the Kerala Court Fees and Suit Valuation Act relief prayed for here under is valued at Rs. 1000/- being the half of the market value of the plaint property. Other reliefs prayed for here under are ancillary and need not be valued separately. So the value of the suit for the court fees is Rs. 1000/-. Hence the value of the suit for the purpose of jurisdiction also Rs. 1000/- . The sum of Rs. 40 is remitted herewith as court fees.” Thereafter the relief portion reads as follows:-

“ Reliefs :- (A) The plaintiff’s title and possession over the plaint property may be declared.

(B) Consequently the defendant and their men may be restrained by a permanent injunction from trespassing into the plaint property or from obstructing the plaintiff’s peaceful possession and the boundaries and barbed wire fencing in the boundaries of the plaint property or from committing any act of waste in the property.

(C) The plaintiff may be allowed to realise the costs of the suit from the defendant and his assets.

(D) Any other ancillary and consequential reliefs which this court may deem fit and proper for the interest of justice may also be allowed.”

7. No where in the plaint the plaintiff states that the plaint schedule property is an agricultural land. But in the description of the plaint schedule property it is stated that it is a "പുരയിടം" . The relevant portion in the schedule attached to the plaint reads as follows :- Against the column വിവരണം is written “ടി എലുകയിലും സർവ്വേ നമ്പരിലും പെട്ട 8.09 ആർ വീസ്കീർണ്ണമുള്ള പുരയിടവും അതിനകത്തുള്ള സകല വകകളും ആകുന്നു.”

8. The learned counsel for the plaintiff argued that the plaint schedule

property is an agricultural land and in support of his argument he relied on the commission report filed in the case. In IA 734/2013 in OS 145/2013 (earlier number of OS17/2017 when it was pending before Munsiff Court, Kottarakara) the advocate commissioner has reported about the plaint schedule property as follows “ കൂടാതെ അന്യായ പട്ടിക വസ്തുവിൽ ഉദ്ദേശം 12 വർഷം പ്രായം തോന്നിക്കുന്ന 5 മുട് പ്ലാവുകളും, ഉദ്ദേശം 12 വർഷത്തെ പ്രയമുള്ള 6 മുട് തെങ്ങുകളും, 10 വർഷം പ്രായം തോന്നിക്കുന്ന ഒരു മാവ്, 6 വർഷം പ്രായം തോന്നിക്കുന്ന ഒരു പെരുമരം തുടങ്ങിയ വൃക്ഷങ്ങൾ കാണുന്നു. കൂടാതെ 30 എണ്ണത്തിൽ കൂടുതൽ വാഴകൾ അന്യായപട്ടിക വസ്തുവിൽ കാണപ്പെടുന്നു.” Besides these plants and trees in the plaint schedule property there is also a foundation basement which is covered with bushes. The fact that there are 30 plantains in the plaint schedule property and there are about 5 jack fruit trees and 6 coconut trees clearly indicate that the plaint schedule property was primarily an agricultural land. The averment in the plaint that the plaintiff was obstructed when he went to the plaint schedule property to take yield is indicating that when the plaintiff went to his agricultural land he was obstructed from taking the yield from the agricultural activities done in the plaint schedule property. In *P. Narayanan Nair v. Dr. Lokeshan Nair & Another*, 2014 (2) KLT 868 the honourable High Court of Kerala held as follows:-

“ 17. Agriculture is an activity in which the person involved therein cultivates the land. Cultivation need not necessarily be paddy cultivation. Growing coconut trees, pepper vines, arecanut trees etc. also would be cultivation. There is no reason to hold that an agricultural land is only that land which is cultivated with paddy. An arecanut garden or a coconut garden would also come within the term “ agricultural land” under Section 7 (2)of the Court Fees Act. The mere presence of a residential house in such a land would not make it a non

agricultural land . The predominant purpose for which the lands is used is to be taken into consideration to ascertain whether the land in question is an agricultural land.”

9. Applying the ratio decidendi in *P. Narayanan Nair v. Dr. Lokeshan Nair & Another*, to the facts of this case, I find that the plaint schedule property is an agricultural land and its valuation is to be done as per Section 7 (2) of the Kerala Court Fees and Suit Valuation Act, 1959.

10. In *Smt. Tara Devi v. Sri. Thakur Radhakrishna Maharaj through Sebaitis Chandeshwar Prasad and Meshwar Prasad & Another* , AIR 1987 SC 2085, the honourable Supreme Court of India held that “ it is only in cases where it appears to the court on a consideration of the facts and circumstance of the case that the valuation is arbitrary, unreasonable and the plaint has been demonstratively under valued the court can examine the valuation and can revise the same.”

11. When the plaint schedule property is predominantly an agricultural land, I find that the valuation of the plaint schedule property considering it as an agricultural land does not appear to be an arbitrary under valuation. Therefore, I find that the valuation done by the plaintiff considering the plaint schedule property as an agricultural land is perfectly legal.

12. The learned counsel for the defendant argued that the suit should be valued as per Section 25 (d) (i) of the Kerala Court Fees and Suit Valuation Act, 1959 as the agreement for sale which is part of the plaint shows that the property is having a market value of Rs. 17,00,000/-. He pointed out that besides the relief of declaration and possession the plaintiff has also sought a

consequential injunction and therefore it would come under Section 25 (d)(i) of the Kerala Court Fees and Suit Valuation Act, 1959.

13. In the relief portion of the plaint, the plaintiffs seeks the relief of the declaration of title and possession over the plaint schedule property and a consequential injunction.

14. In Section 6(1) of the Kerala Court Fees and Suit Valuation Act, 1959, reads as follows:

6... “ *Multifarious suits:- (1) In any suit in which separate and distinct reliefs are sought based on the same cause of action, the plaint shall be chargeable with a fee on the aggregate value of the reliefs :*

Provided that, if a relief is sought only as ancillary to the main relief, the plaint shall be chargeable only on the value of the main relief.”

15. In *State Bank of India v. Niyas & Another*, 2021 (2) KHC 18, the honourable High Court of Kerala held that the real test to distinguish between an ancillary relief and main relief is to see whether one could sustain without the other being granted. Here in this case the relief of consequential injunction is dependent upon the declaration of title and possession of the plaint schedule property. Therefore applying proviso to Section 6(1) of the Kerala Court Fees and Suit Valuation Act, 1959 I find that the plaint shall be chargeable only on the value of the main relief. Therefore the main relief which is declaration of title and possession is the one which would determine the court fees payable. This would bring the valuation to Section 25 (a) of the Kerala Court Fees and Suit Valuation Act, 1959. The suit in this case is therefore to be valued as per Section 25(a) of the Kerala Court Fees and Suit

Valuation Act,1959 read with Section 7(2) of the Kerala Court Fees and Suit Valuation Act, 1959.

16. In short, in the light of the discussions above, I conclude that the suit is to be valued as per Section 25 (a) r/w Section 7(2) of the Kerala Court Fees and Suit Valuation Act,1959. Additional Issue No. 4 is found accordingly.

Dictated to the confidential assistant, typewritten by her, corrected and pronounced in open court on this 6th day of December, 2023.

Sd/-
SANDEEP KRISHNA.V
Sub Judge.

APPENDIX:- Nil.

Sd/-
Sub Judge.

Typed by : Binu.S
Compared by: Adya.G.S