

IN THE COURT OF THE MUNSIFF, KOTTARAKARA.

Present :- Sri. R. Suresh Kumar ., LL.B., Munsiff.

Wednesday the 13th day of February, 2019/24th Magham, 1940.

OS. No. 620/2011

Between

Plaintiff:-

Kamalamma, aged 60 years,
W/o K.N. Ramakrishnan, N. M. House,
Edamulackal P.O., Edamulackal Muri,
Edamulackal Villagge, Anchal,
Kottarakkara Taluk.

By Advs. C. Prakash and Shine Prabha.

And

Defendants:-

- (1). Nabeesathu Beevi,
aged around 50 years, W/o Abdul Azeez,
Nizar Manzil, Ittiva Muri, Ittiva Village,
Chunda, Kottarakkara Taluk.
- (2). Sheena Wahid, aged 26 years,
D/o Wahid, Thavarathu Puthen Veedu,
Cherukulam, Ittiva Village,
Chunda, Kottarakkara Taluk.
- Addl.(3). Rehma Beevi, aged 54 years,
W/o Abdul Wahid, Thavarathu Puthen Veedu,
Cherukulam, Chunda, Ittiva Village,
Kottarakkara Taluk.

(Addl. D3 is impleaded as per order in
IA.990/14 dated 18.08.2014)

(The Defendants were set exparte)

This suit filed U/S. 26, Order VII and Rule 1 of CPC 1908, for declaration of right, title, possession, demarcation and for injunction coming on for hearing before me on 07/02/2019 and having stood over for consideration on 13.02.2019 the court delivered the following :-

JUDGMENT

Suit is for declaration of title, injunction, fixation of boundary and for recovery.

Plaint averments in brief.

1. The plaint schedule item No.1 property belongs to plaintiff as per Partition deed No.1851/69. The plaint schedule item No.2 property belongs to 1st defendant as per Sale deed No.1326/74. It situates on the immediate north of plaint schedule item No.1 property. Said item No.2 property was once belonged to plaintiff's family. During resurvey proceedings mistake occurred with regard to plaint schedule item No.1 property. Complaints were filed. On 02.11.2009 the 1st defendant trespassed in to the plaint schedule item No.1 property and reduced in to her possession. Then the defendant planted rubber saplings in it along with the item No.2 property. So the plaintiff wants recovery of possession and to fix boundary.

2. Hence the suit is filed to declare the plaintiff's right, title and interest over plaint schedule item No.1 property, get recovery of said property from defendants, to fix demarcating boundary between plaint schedule item No.1 and 2 properties and put boundary wall and also to restrain defendants from trespassing in to plaint schedule item No.1 property, or committing mischief in it or causing inconvenience to the peaceful enjoyment of plaintiff over it or making damage to the boundary wall.

The defendants filed written statement. Averments in brief.

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3. The plaintiff has no property. There is no mistake crept while conducting resurvey proceedings. The suit is bad for non-joinder of necessary parties. So the suit is liable to be dismissed.

4. Following issues were raised.

1. Is the plaintiff entitled to get a decree of declaration as prayed ?
2. Is the plaintiff entitled to get recovery of possession as prayed ?

3. Is the plaintiff entitled to get a decree of fixation of boundary ? If so through which line.
4. Is the plaintiff entitled to get a decree of permanent prohibitory injunction as prayed ?
5. Relief and costs ?

5. From the side of plaintiff, Exts.A1 to A4 were marked and Exts.C1 to C3 were also marked.

6. While the plaintiff was present in court for adducing evidence, the defendant was absent and there was no representation for them. The plaintiff was not cross examined.

Issues No.1 to 4.

7. The plaintiff is relying upon Ext.A1 to A4 documents. There are no documents produced by defendants to prove their right over plaint schedule item No.1 property. As per Exts.C3 the plaint schedule item No.1 property was measured shown as 'FGHONMF' plot. The plaint schedule item No.2 property was measured and shown as 'NOIJKLN' plot. The separating boundary between to these properties

is 'MNO' line. Plaintiff has proved her case. Hence these issues are found in favour of the plaintiff.

8. **Issue No.5**

In the result, suit is decreed.

1. The plaintiff's right title and interest over plaint schedule item No.1 property is hereby declared.
2. The plaintiff is allowed to get recovery of said property from the defendants.
3. The plaintiff is allowed to put up boundary on 'MNO' line in Ext.C3 plan.
4. Defendants are restrained by a decree of permanent prohibitory injunction from trespassing in to plaint schedule item No.1 property or committing mischief in it or causing inconvenience to the peaceful enjoyment or plaintiff over plaint schedule item No.1 property or making damage to the boundary wall.

5. Costs also allowed.

6. Ext.C3 plan shall form part of the decree.

Dictated to the Confdl. Asst., transcribed and typed by her corrected and pronounced by me in open court on this the 13th day of February, 2019.

**Sd/-
R. SURESHKUMAR
MUNSIF.**

APPENDIX :-

Exhibits marked for the Plaintiff:-

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|----|---|------------|---|---|
| A1 | : | 03.04.1969 | : | Copy of Partition deed No.1851/1969 of the Chadayamangalam S.R.O. |
| A2 | : | 28.03.1974 | : | Copy of Gift deed No.1326/74 of the Chadayamangalam S.R.O. |
| A3 | : | 14.05.1969 | : | Copy of Sale deed No.2698/69 of the Chadayamangalam S.R.O. |
| A4 | : | 01.03.1960 | : | Copy of Mortgage deed No.1891/1960 of the Chadayamangalam S.R.O. |

Exhibit marked for the Defendants:- Nil

Court exhibits:-

- C1 : 05.12.2018 : Report submitted by the Commissioner Advocate K. Vinodkumar.
- C2 : 05.12.2018 : Mahazar submitted by the Commissioner Advocate K. Vinodkumar.
- C3 : 05.12.2018 : Survey plan submitted by Sri. N. Gopinatha Pillai, Rtd. Taluk Surveyor and Joint Commissioner.

Witness for both sides:- Nil.

Id/- Munsiff.

// True Copy //

Typed by : Animole. T. C

Compared by :

MUNSIFF