

IN THE COURT OF THE MUNSIFF, KOTTARAKARA.
Present :- Smt. Sumey Chandran, Munsiff.
Friday the 23rd day of October, 2020/1st day of Karthika, 1942.

OS. No.620/2011

Between

Plaintiff:-

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

By Advs. C. Prakash, Shine Prabha and V. Suku

And

Defendants:-

- (1). Nabeezath Beevi, aged 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, Chunda, Ittiva Village,
Kottarakkara Taluk.
- Addl. (3). Rehma Beevi, aged 54 years,
W/o Abdul Wahid, Thavarathu Puthen Veedu,
Cherukulam, Chunda, Ittiva Village,
Kottarakkara Taluk.

(Additional D3 is impleaded as per Order in
IA.990/2014 dated 18.08.2014)

By Advs. B. Vijayan for D1 and
C.P. Sarachandran Nair for D2 and D3

This suit is filed U/S. 26, Order VII, Rule 1 of CPC 1908, for
declaration of title, injunction, fixation of boundary and for recovery,

coming on for hearing before me on 23.10.2020 and the court on the same day delivered the following:-

JUDGMENT

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

Plaintiff's case is as follows:-

1. The plaintiff and defendants are adjacent property owners. Plaintiff schedule item No.1 property is having an extent of 1 Acre 50 cents of land situated in old survey No.823/1-1-420 of Ittiva Village. The said property obtained by plaintiff by virtue of Partition deed No.1851/1969 of SRO, Chadayamangalam. The property was in absolute possession of the plaintiff and she is paying land tax for the same. The husband of plaintiff named Ramakrishnanan was a Military person and plaintiff accompanied to his place of employment which used to change in each three year term. Thus the plaintiff was out of state for a period of over 10 years. Plaintiff schedule item No.2 property is having 1 Acres of land belonged to the 1st defendant on the basis of sale deed No.1326/76 and situated at the immediate north of plaintiff schedule item No.1 property. A stream let going through the western side of plaintiff schedule property and of the west of it paddy fields belongs to various persons are situated. When the plaintiff

was absent in the locality for about 10 years, a close relatives of 1st defendant working in survey department was authorised conduct resurvey proceedings. By utilising the absence of plaintiff 1st defendant had conducted manipulation in the resurvey proceedings with regard to the plaint schedule item No.1 property. The defendant No.1 by utilising the situations trespassed in to the plaint schedule item No.1 property and the reduced the same in to her possession by annexing plaint item No.1 property with plaint item No.2 property. Thereafter defendant planted rubber saplings in both items of property. Now the properties are situating without any boundary demarcations. The 1st defendant is objecting the right, title and interest of the plaintiff over the plaint schedule property. Now the plaint item No.1 and 2 properties are under the possession of the 1st defendant. The defendants have no manner of right over the plaint schedule item No.1 property. 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, 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.

2. The defendants filed written statement contending as follows:-

They denied the claim of the plaintiff. 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.

3. 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 ?

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

5. The defendant was not ready to cross examine the plaintiff. The case was included in the list of February, 2020. There was it posted to 03.03.2020 . Thereafter several chances for given but the defendant not ready to examined the plaintiff and did not adduce any oral or documentary evidence.

6. Issues No.1 to 4.

The plaintiff is relying upon Ext.A1 to A4 documents and Ext.C1 to C3 commission report. 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 and shown as 'FGHONMF' plot. The plaint schedule item No.2 property was measured and shown as 'NOIJKLN' plot. The separating boundary between these two properties is 'NO' line. Plaintiff has proved her case. Hence these issues are found in favour of the plaintiff.

7. 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 'NO' 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 of plaintiff over plaint schedule item No.1 property or making damage to the boundary wall.

5. Plaintiff is entitled to recover the costs of the suit from the defendants.

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 23rd day of October, 2020.

**SUMEY CHANDRAN
MUNSIFF**

APPENDIX:-

Exhibits marked for the plaintiff:-

- A1 : 03.04.1969 : Certified copy of Partition deed No.1851/1969 of Sub Registrar Office, Chadayamangalam.
- A2 : 28.03.1974 : Certified copy of Gift deed No.1326/1974 of Sub Registrar Office, Chadayamangalam.

A3 : 14.05.1969 : Certified copy of Sale deed No.2698/1969 of Sub Registrar Office, Chadayamangalam.

A4 : 01.03.1960 : Certified copy of Mortgage deed No.1891/1960 of the Sub Registrar Office, Chadayamangalam.

Exhibit marked for the Defendants:- Nil

Court exhibits:-

C1 : 05.12.2018 : Commission 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.

Typed by : Animole. T.C

Compared by :

MUNSIFF