

IN THE COURT OF THE MUNSIF, KOTTARAKARA.

Present :- Smt. Sumeey Chandran, Munsiff.

Thursday the 10th day of February, 2022/ 21st day of Magha, 1943.

OS. No.326/2020

Between

Plaintiff:-

Gopalakrishna Pillai, aged 55 years,
S/o Raghavan Pillai, Madathilazhikathu Veedu,
Edakkidom Muri, Kareepra Village,
Kottarakkara Taluk.

By Adv. D. Anilkumar and T.S. Akhilakumar.

And

Defendants:-

- (1). Prakash, aged 55 years, S/o Divakaran,
Priya Bhavanam, Elayam Muri,
Kareepra Village, Kottarakkara Taluk.
- (2). Leelamony, aged 51 years, W/o Prakash,
Priya Bhavanam, Elayam Muri,
Kareepra Village, Kottarakkara Taluk.

By Adv. A. Gopalakrishnan, Adv. T.S. Sanjeev
and Adv. B. Sajith.

This suit is filed U/S. 26 and Order VII, Rule 1 of CPC 1908, for declaration of easement right of prescription and for permanent prohibitory injunction, coming on for hearing before me on 10.02.2022 and on the same day the court delivered the following:-

JUDGMENT

Suit is for declaration of easement right of prescription and for permanent prohibitory injunction .

Plaintiffs case is as follows:-

1. The plaint A schedule property is 66 Ares of land comprised within resurvey block No.7, survey 243 of Kareepra Village. It includes 25.80 Ares in survey 243/12, 4.31 Ares in survey 243/14, 7.29 Ares in survey 243/14-2, 7.60 Ares in survey 243/4 and 21 Ares in survey 243/5. The plaintiff obtained by virtue of Sale deed No.1662/2005 executed by Johnkutty and his wife Thankamma. The plaintiff is in possession and enjoyment of the plaint A schedule property from the date of the Sale deed in his favour in continuation his predecessors in interest. Mutation was effected in the name of the plaintiff and the land tax for the same is paid as per the thandaper No.13948 of Kareepra Village.

The plaint B schedule property is a pathway having a width of 1 metre (5 lings) starting from the southern road and passing through the eastern portion of the 33 cents of property, which is a part of plaint A schedule and proceeds towards north to the property of the defendants and then further north to the remaining 1.30 Acres of property comprised in A schedule. The way portion through 33 cents of property is having a length of 60 metres and the length of the same through the property of defendants is 8 metres. The way is in existence even before the Sale deed of the

year 1992, in the name of the predecessors in interest of the plaintiff. The plaintiff is using the same for ingress and egress to the 1.30 Acre portion of the plaintiff A schedule property, in continuation to his predecessors in interest Mr. Johnkutty and Thankamma. The plaintiff is using the B schedule way openly, continuously, uninterruptedly, as of right and hostile to the real owner from the date of his Sale deed. So the plaintiff has got a right of easement by way of prescription over the B schedule property for the beneficial enjoyment of the northern portion of the A schedule property having an extent of 1.30 Acres. The defendants are also using B schedule for their ingress and egress to their property, which is scheduled hereunder as the plaintiff C schedule property. The plaintiff B schedule is having an age of more than 50 years. The plaintiff B schedule property is more particularly described in the schedule annexed hereunder in detail.

The defendants are having 18 cents of land comprised within resurvey block No.7, survey 243/1 of Kareepra Village (old survey No.931/2-3/10). They obtained the same by virtue of the Sale deed No.1781/88. They obtained the property from one Mr. Thankappan, who has executed a portion of A schedule to the predecessors in interest of the plaintiff.

The defendants have taken water connection through plaintiff B schedule way. They have installed a water meter and a water tap in the B schedule way in such a way as to block the user of the same. The plaintiff filed complaint before the water authority office at Kundara. The water authority officials have visited the property and shifted the water tap and metre in to the C schedule property. The defendants

were aggrieved by this and openly declared that they will block the B schedule portion on the eastern side of their property so as to block the ingress and excess to the 1.30 Acres of land in 'S' schedule property. The 2nd defendant and her grand children are physically obstructing the plaintiff to enter in to his property through B schedule way. The minor children are obstructing the plaintiff stating that if he enter in the B schedule, he will be trapped in "POCSO" case. The defendants have tied a dog at the south-eastern corner of their property in the B schedule, with a view to obstruct the entry of the plaintiff and his men in to the A schedule property. A schedule property is planted with rubber seedlings of 3 years age. So frequent visit and attention is necessary to protect the same. There is no other way for ingress and egress to the 1.30 Acres of A,S schedule portion. On 04.07.2020, the defendants entered up on B schedule way and tried to construct a mud wall across the same to block the entry to the property of the plaintiff. But the defendants could not succeed in their evil attempt due to the timely intervention of the plaintiff. On 04.07.2020 the 1st defendant has openly declared that he will block the B schedule at any cost. The plaintiff is not in a position to obstruct the evil acts of the defendants.

2. Summons was served to the defendants. But they did not filed any written statement. Defendants were absent and hence they were set exparte.

3. Plaintiff was examined as PW1 and Exts.A1 to A4 and Exts.C1 to C3 were marked. From the evidence of plaintiff and from Exts.A1 to A4 and Exts.C1 to C3 the plaint claim stands proved.

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

1. It is hereby declared that the easement right of prescription over the plaint B schedule property for the beneficial enjoyment of the plaintiff for the 1.30 Acres of plaint A schedule property through the eastern portion of C schedule property.

2. The defendants are restrained by way of permanent prohibitory injunction from obstructing the plaint B schedule property or from closing the same or from reducing the width of the same or from obstructing the plaintiff and his men from using the same for beneficial enjoyment of the 1.30 Acre portion of the plaint A schedule property.

3. Plaintiff is allowed to realise the costs of the suit from the defendants.

Dictated to the Confdl. Asst., transcribed and typed by her corrected and pronounced by me in open court on this the 10th day of February, 2022.

**SUMEY CHANDRAN
MUNSIFF**

APPENDIX:-

Exhibits marked for the plaintiff:-

- A1 : 30.06.2005 : Certified copy of Sale deed No.1662/2005..
A2 : 19.10.1992 : Certified copy of Sale deed No.2370/1992
A3 : 19.08.1988 : Certified copy of Sale deed No. 1981/1988.

A4 : 19.05.2020 : Original Tax receipt No.KL 02040903055/2020 of Kareepra Village Office.

Exhibit marked for the defendant:- Nil.

Court exhibits:-

C1 : 20.02.2017 : Commission report prepared by Adv.Vivek Ujwal Bharathi, Advocate commissioner.

C2 : 20.02.2017 : Mahazar prepared by Adv. Vivek Ujwal Bharathi, Advocate commissioner.

C3 : 20.02.2017 : Rough sketch prepared by Adv.Vivek Ujwal Bharathi, Advocate commissioner.

Witness examined for the plaintiff:-

PW1 : 09.02.2022 : Gopalakrishna Pillai.

Witness examined for the defendants :- Nil.

Id/- Munsiff.

Typed by : Animole. T.C

Compared by :

MUNSIFF.