

IN THE COURT OF THE MUNSIFF, KOTTARAKARA.

**Present :- Smt.Sumey Chandran ., Munsiff.
Thursday the 7th day of April, 2022/17th day of Chaithra, 1944**

IA No.3226/18 in OSNo. 515/18

Between

Petitioner:-

Vasantha aged 65 years, D/o Meenakshi,
Plakala Veedu, (Nishu Bhavan), Puthoor Village,
Kottarakkara Taluk. Represented by her Power of Attorney
Rajappan, aged 62 years, S/o Sankaran, Alappattu Thekkathil,
Karickal Muri, Pavithreswaram Village, Kottarakkara Taluk.

By Adv. V. Vipinachandran.

And

Respondents:-

1. Indira, aged 52 years, D/o Kutty,
Vadakkekkara Veedu, Puthoor Village,
Kottarakkara Taluk.
2. Aneesh Raj, aged 33 years,
S/o Rajan, Plakkala Veedu (Nishu Bhavan),
Puthoor Village, Kottarakkara Taluk.
3. Anusree Raj, aged 30 yeras,
D/o Vasantha Plakkala Veedu (Nishu Bhavan),
Puthoor Village, Kottarakkara Taluk.

By Adv. D. Anilkumar.

This petition is filed by the petitioner under order 39 Rule 1 of CPC for injunction. This Petition is heard on 07.04.2022 and the same day the court passed the following:-

ORDER

This is a petition filed under Order 39 Rule 1 of CPC.

1. The crux of petitioner's case is as follows:-

Petitioner is the Power of Attorney Holder of the plaintiff. The

petitioner's husband, is the owner of plaint schedule property. He is no more. After the death of husband, the petitioner, the respondent Nos.2 and 3 are owners in possession and enjoyment of the plaint schedule property. Since respondent Nos.2 and 3, the children of petitioner is not in station, they are arrayed as respondents in the petition. The 1st respondent is residing in the property. Earlier when the 1st respondent tried to trespass in to the plaint schedule property a suit has been filed and the suit was decreed partly. But the relief of possession was not granted in favour of the petitioner. Against the decree petitioner preferred appeal before the Hon'ble Sub Court and allowed the appeal. But after obtaining the decree, when the petitioner approached Village Office, Puthoor for affecting the mutation, the village officer was not ready for effecting mutation. On 20.09.2018, the respondents trespassed in to the plaint schedule property and unloaded materials there. On 25.09.2018, the respondents constructed a shed in the plaint schedule property. She has no right to do so. Hence the 1st respondent is directed to remove the same by way of mandatory injunction. She is also restrained from trespassing in to plaint schedule property and from committing any kind of mischief thereon. Hence the petition.

2. The respondents appeared and filed objection contending as follows:-

It is false to say that 1st respondent is residing in the house situated in the property. The exact boundary of the plaint schedule property

is to be tried. It is false that the petitioner is in possession of the same. The shed was constructed earlier as per the life mission project. Fund was sanctioned to renovate the residential building in the Plaint schedule property. There was no decree for evicting the 1st respondent from the plaint schedule property. Present and substantially in issue in OS No.646/2012. The plaint schedule property was obtained by the mother of 1st respondent by the patta issued by Deputy Collector, Land Tribunal, Kollam. Thereafter the property is in the possession and enjoyment of the 1st respondent. It is also false that on 20.09.2018 the 1st respondent trespassed upon the plaint schedule property and unloaded materials for constructing shed in the plaint schedule property. The 1st respondent has no need for trespassing upon a property which is in the possession and enjoyment. Since there is a residential building in the plaint schedule property the respondent have no need to construct any shed in the said. The 1st respondent has not trespassed in the plaint schedule property or any new construction thereon. There is no decree for evicting the 1st respondent from the plaint schedule property or to vacate the property. The cause of action is false.

3. The points that arosed for consideration are.

1. Whether the petitioner has a prima facie case ?
2. Is balance of convenience in favour of petitioner ?
3. Is irreparable injury caused to the petitioners if, injunction not granted ?

4. What is the order ?

4. The documents produced the petitioner were marked as Ext. A1 to A3. Documents produced by the respondent is marked as Ext.B1 to B13. All documents marked for the purpose of this petition only.

5. Heard both sides.

6. **Point No. 1 to 3**

The petitioner claimed that the plaint schedule property was owned and possessed by the husband of petitioner, as per Sale deed No.3809/1983. The said fact is denied by the respondent. According to respondent, the petitioners have no title or exclusive possession over any part of plaint schedule property. As per the judgment in OS No.646/98, no decree of recovery possession was passed by any of the courts. I perused the decree and the judgment in AS No.11/12. The Hon'ble appellate court has found that the respondent No.1 is in possession of the plaint schedule property. However there was no decree for evicting the petitioner. The matter in dispute in earlier case and the plaint schedule property in this cases are one and same. The petitioner could have raise the prayer in this petition, in the earlier case. It is can be seen from the pleading of the 1st respondent in the earlier suit that he had constructed a house thereon at that time. There are several documents produced by the respondent which showed that the respondent is possession of the plaint schedule property. Hence I find no merit in the contentions put forward by the petitioner. Thus

the points are found against the petitioner.

7. **Point No.4**

In the result, the petition is dismissed.

Dictated to the Confdl. Asst., transcribed and typed by her corrected and pronounced by me in open court on this the 7th day of April, 2022.

Sd/-

**SUMEY CHANDRAN
MUNSIFF**

APPENDIX :-

Exhibits marked for the Plaintiffs:-

- | | |
|-------------------|---|
| A1: 28.10.1983: A | Attested copy of Sale deed No. 3809/1983. |
| A2: 22.06.2013: | Copy of Decree in AS 11/12 of Karunagappally Sub Court. |
| A3: 22.06.2013: | Copy of Judgment in AS 11/12 of Karunagappally Sub Court. |
| A4: 20.10.2018: | Power of Attorney. |

Exhibits marked for the Defendants :

- | | |
|-------------------|--|
| B1 : 15.09.1980 : | Certified Copy of SMP.360/1980 of the Deputy Collector, Land Tribunal, Kollam. |
| B2 : 03.10.1969: | Sale deed No. 3539/69 executed by Sidharthan in favour of mother of the 1 st defendant. |
| B3 : : | Certified copy of Thandapper A/c No. 6257 of Pavithreswaram Village. |
| B4 : 19.02.2003 : | Copy of Tax receipt. |
| B5 : 10.03.1981 : | Certified copy of judgment of OS 113/1980 at Munsiff's Court, Kottarakkara. |

- B6 : 25.07.1990 : Certified copy of judgment in SA 748/1983 of the Hon'ble High Court of Kerala.
- B7 : 04.04.2014 : Certified Copy of delay petition IA. 411/14 in AS. 11/12 of the Hon'ble Sub court , Karunagappally.
- B8: 25.11.2014: Copy of ordrer in IA 411/14 in AS 11/12 of the Hon'ble Sub Court, Karunagappally.
- B9 : 28.01.1999 : Ration Card.
- B10 : 24.12.2008 : Ration Card.
- B11 : 23.09.1919 : Certificate issued by the Asst. Electrical Section KSEB, Puthoor.
- B12 : 28.09.1919 : Ownership certificate from Pavithreswaram Gramapanchayath.
- B13 : 02.07.1919 : Certificate from Pavithreswaram Gramapanchayath.

Court Exhibits:-

- C1 : 15-11 .2018 : Commission Report prepared by Sri.L.Wilson , Advocate Commissioner.
- C2 : 15-11 .2018 : Mahazar prepared by Sri.L. Wilson Advocate Commissioner.
- C3 : 15-11 .2018 : Rough Sketch prepared by,Sri. L.Wilson Advocate Commissioner.

Witness both sides :- Nil

// True Copy//

Id/ Munsiff

Typed by : Praseena M.L

Compared by :

MUNSIFF