

IN THE COURT OF THE MUNSIFF-MAGISTRATE, SASTHAMCOTTA.

Present : Sri. ANIL KUMAR T. S., MUNSIFF

Wednesday the 24th day of July, 2024
2nd day of Sravana, 1946

OS.7/2015

Between

Plaintiffs

- 1) Joy, aged 55 years,
S/o. Mathunni,
Binu Bhavanam,
Padinjattam Muri,
Kunnathoor Village.
- 2) Sreekala, aged 42 yeas,
D/o.Sarojini,
Sreekala Mandiram,
Padinjattam Muri,
Kunnathoor Village.

(By Adv. T. Sasidharan Unnithan)

And

Defendants

- 1) Rajendraprasad, aged 50 years,
D/o. Thankamma, Anjali,
Padinjattam Muri,
Kunnathoor Village.
- 2) Biju, aged 35 years,
S/o.Nani, Bindu Bhavanam,
Padinjattam Muri,
Kunnathoor Village.

(By Adv. S.Prahladan &
Adv. Baby John Amballoor)
(Defendants set exparte)

This suit coming on for hearing before me on 24/07/2024 and on the same day the court delivered the following:-

J U D G M E N T

Suit for injunction

2. The plaint averments in short are as follows:- The first plaintiff purchased 10 cents of property comprised in old survey 630/2 of Kunnathoor Village as per sale deed number 313 dated 07.02.1986. He set apart 1 ½ cents of property on the north and west side of the property for a foot way, which is being used by the local residents and it is described as plaint C schedule way. The remaining 3.5 Ares of property comprised in block number 16, re survey number 23/6, is described as plaint A schedule property. The second plaintiff purchased the plaint B schedule property, having an extent of 3.23 Ares comprised in block number 16, re survey 24/3-1 of Kunnathoor Village, as per sale deed number 34 dated 3.1.1997. The first and second plaintiffs are residing in plaint A and B schedule properties respectively. The first plaintiff had constructed compound wall on the north and west boundaries of the plaint A schedule property, 36 years ago. The property owned by Anil Kumar is on the southern side of plaint A schedule property. The plaint B schedule property is on the southern side of the property owned by Anil Kumar. There is no compound wall on the western side of the property owned by Anil Kumar. There is compound wall on the western boundary of the plaint B schedule property. The defendants are using the plaint C schedule way to reach the public road. On 30.12.2014, the defendants requested to remove the compound wall of the plaint A and B schedule properties for the purpose of widening the plaint C schedule way, but the plaintiffs turned down their request. On 05.01.2015, the defendants declared that they would widen the width of the plaint C schedule way. Hence the

plaintiff filed this suit seeking permanent prohibitory injunction. After the institution of the suit, on 08.01.2015 at 11 pm, the defendants completely demolished the compound wall on the western side of the plaintiff A and B schedule properties. As per order of the Court, the plaintiffs reconstructed the demolished compound wall under the supervision of the Advocate Commissioner appointed by the Court under protection of the Police. The first plaintiff has claimed Rupees 50,000/- and the second plaintiff has claimed Rupees 30,000/- from the defendants towards the amount spent by the plaintiffs for reconstruction of the compound wall.

3. The defendants filed written statement denying the plaintiff averments. According to the defendants, the plaintiff C schedule is a public way having 4-meter width that has been used by the defendants and others for more than 50 years. The plaintiffs have not set apart any property for the construction of plaintiff C schedule way. The plaintiffs had agreed to construct compound wall only after leaving 1 meter space from the plaintiff C schedule way but they constructed the compound wall encroaching the plaintiff schedule way and thereby reduced its width. The compound wall on the western side of the plaintiff B schedule property was constructed three months back without obtaining permission from the Panchayat and it is to be removed. The defendants have no intention to encroach upon the plaintiff schedule properties.

4. After filing the written statement, on the date of trial, the defendants did not appear. Hence, the defendants are set aside.

5. In the evidence, the second plaintiff filed affidavit in lieu of chief examination reiterating the plaintiff averments. Exts. A1 to A6, Exts. C1, C1(a), C2, C2(a), C3 and C3 (a) are marked. Ext. A1 is the title deed of the plaintiff B schedule property and Ext. A2 is its tax receipts. Ext. A3 is the title deed of the plaintiff A schedule property and Ext. A4 is its tax receipts. These

documents prove that the plaintiff A and B schedule properties are in the possession, enjoyment and ownership of the plaintiffs. Ext. C1 and C1(a) are the report submitted by the Advocate Commissioner who visited disputed area on 08.01.2015. In Ext. C1, the Advocate commissioner has noticed the compound walls on the western boundary of plaintiff A and B schedule properties. While the suit was pending, the defendants demolished the above-mentioned boundary walls of the plaintiff schedule properties. The Advocate Commissioner, who prepared Ext. C1 report again visited the spot on 13.02.2015 and prepared Ext. C2 report and Ext. C2(a) plan. In Ext. C2, the Advocate commissioner reported that the compound wall noticed by him in the previous report has been completely demolished. As per order in IA 460/2015 dated 08.07.2015, this court had granted permission to the plaintiffs to reconstruct the demolished compound wall. The compound wall was reconstructed in the presence of the Advocate Commissioner with Police aid. The Advocate Commissioner filed Ext. C3 and Ext. C3 (a) plan regarding the reconstruction of the demolished compound wall and the cost incurred for the reconstruction. As per the Ext. C3 commission report the 1st plaintiff spent Rupees 1,59,300/- for reconstructing the compound wall of plaintiff A schedule property whereas 2nd Plaintiff spent Rupees 53,700/- for reconstruction of the compound wall of the plaintiff B schedule property. Ext. C3 (a) to C3 (d) series are vouchers showing amount spent for construction of the compound walls demolished by the defendants. The Police have also registered FIR against the accused in the incident as revealed from Ext. A6 FIR and Ext. A6(a), FIS. The facts sworn in by the plaintiff together with accompanying documents proved that the apprehension expressed by the plaintiffs regarding the threat of invasion by the defendants is genuine and well founded. The plaintiffs have also produced sufficient materials to prove that the defendants demolished the compound wall ignoring the order of this court. The 1st

plaintiff claimed Rupees 50,000/- Rupees and the 2nd plaintiff claimed Rupees 30,000/- from the defendants to defray the expenses incurred by them for reconstruction of the compound wall demolished by the defendants. The plaintiffs are entitled to realise the said amount from the defendants.

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

i) The defendants and persons under them are restrained by a permanent prohibitory injunction from trespassing upon the plaint A and B schedule properties and from causing any damages to the compound wall of plaint A and B schedule properties.

ii) The defendants shall jointly pay Rupees 50,000/- to the first plaintiff and Rupees 30,000/- to the 2nd plaintiff within three months from the date of decree, failing which the plaintiffs are entitled to realize the amounts through process of law.

iii) In the circumstances of the case the plaintiffs are entitled to receive the cost of the proceedings from the defendants.

(Dictated to the Confidential Assistant, typed by him, corrected and pronounced by me in open court, this the 24th day of July, 2024)

Sd/-
ANIL KUMAR T. S.
MUNSIFF

APPENDIX :

Exhibits marked from the side of Plaintiffs

A1	-	03/01/1997	-	Original sale deed No. 34/97 of SRO, Sasthamcotta.
A2	-	01/06/2024	-	Tax receipt issued from Village Office, Kunnahtoor.

- | | | | | |
|----|---|------------|---|--|
| A3 | - | 07/02/1986 | - | Original sale deed No. 313 of SRO, Kadambanadu. |
| A4 | - | 29/04/2014 | - | Tax receipt issued form Village Office, Kunnathoor. |
| A5 | - | 08/07/2015 | - | Certified copy of order in IA 460/2015 of OS.7/2015. (Rejected). |

A6(Series)

- | | | | | |
|--------|---|------------|---|---|
| A6 | - | 16/01/2015 | - | Certified copy of FIR in CC 699/15 of Police Station, Sasthamcotta. |
| A6(a)- | | 16/01/2015 | | Certified copy of FIS in CC 699/15 of Police Station, Sasthamcotta. |

Exhibits marked from the side of Defendant : NIL

Court Exhibits:-

- | | | | | |
|--------|---|------------|---|--|
| C1 | - | 08/01/2015 | - | Commission report prepared and submitted by Commissioner Advocate V. Prasad. |
| C1(a)- | | 08/01/2015 | - | Rough sketch prepared and submitted by Commissioner Advocate V. Prasad. |
| C2 | - | 18/02/2015 | - | Commission report prepared and submitted by Commissioner Advocate V. Prasad. |
| C2(a)- | | 18/02/2015 | - | Rough sketch prepared and submitted by Commissioner Advocate V. Prasad. |
| C3 | - | 28/09/2015 | - | Commission report prepared and submitted by Commissioner Advocate V. Prasad. |
| C3(a)- | | - | - | Voucher showing amount spent for construction |
| C3(b)- | | - | - | Voucher showing amount spent for construction |
| C3(c)- | | - | - | Voucher showing amount spent for construction |
| C3(d)- | | - | - | Voucher showing amount spent for construction |

Witnesses examined from the side of Plaintiff

PW1 - 26/06/2024 - Sreekala

Witnesses examined from the side of Defendant : NIL

Id/-

MUNSIFF

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