

IN THE COURT OF THE MUNSIFF-MAGISTRATE, SASTHAMCOTTA.
Present : Sri. ANIL KUMAR T. S., MUNSIFF

Tuesday the 22nd day of August, 2023

31st day of Sravana, 1945

OS.82/2016

Between

Plaintiff

- 1) Abdul Azeez, aged 54 years,
S/o. Pareethu Rawther,
Valya Veettil Puthen Veedu,
Panappetty Muri,
Sasthamcotta Village.
- 2) Rasiya Beevi, aged 49 years,
W/o.Abdul Azeez,
Valya Veettil Puthen Veedu,
Panappetty Muri,
Sasthamcotta Village.

Addl 3) Aneesh, S/o.Abdul Azeez,
Valya Veettil Puthen Veedu,
Panappetty Muri,
Sasthamcotta Village.

Addl. P3 is impleaded as per order in
IA 424/2019 dated 23/09/2019

(By Adv. Sri.Saiju Koshy)

And

- 2) Seenath Beevi, aged 45 years,
W/o.Kabeer Kutty, Mulleri North,
Panappetty Muri, Sasthamcotta Village.

(By Adv. Sri.Jalaludheen)

This suit coming on for hearing before me on 22/08/2023 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 plaintiffs are the owners of the plaint A schedule property having extent of 16.65 Ares comprised in block number 14 Re-survey number 62/13 of Sasthamcotta Village. The plaint schedule property is in the possession and enjoyment of the plaintiffs.

3. The defendants are owners of the property on the eastern side of the plaint schedule property and Ambimukku -Parayil Junction road is passing through the southern side of their property and they have direct access to their property from the above mentioned public road. The defendants attempted to cut open a new road through the southern side of plaint schedule property. Hence the plaintiffs filed this suit.

4. The defendants entered appearance and filed written statement along with counter claim. According to the defendants, their property is on the eastern side of the plaint A schedule property and a two feet wide way is available to the property of the defendants through the southern side of the plaint schedule property. They had purchased the property, which was part of the plaint schedule property, from the plaintiff with right to use the two feet wide way to their property as per sale deed number 2117 dated 28/06/1999 of Sasthamcotta SRO. The plaintiff filed the suit suppressing the above material facts.

5. The defendants filed counter claim which can be summarized as follows. The 1st defendant/counter claim plaintiff had purchased the counter claim A schedule property having an extent of 10 cents, from the plaintiff/counterclaim defendant, as per sale deed number 2117 dated 28/06/1999. The counterclaim A schedule property is in the possession and enjoyment of the defendant/counter claim plaintiff since 28/06/1999. Counter claim B schedule is the way having 2 feet width and 15 metre length leading to the counter claim A schedule property and the said way portion is described in the title deed of the counter claim A schedule property and the defendant/counter claim plaintiff has easement by grant over the counter claim B schedule way. The plaintiff/counter claim defendants have no right obstruct the user of counter claim B schedule way by the defendant /counter claim plaintiffs. When the counter claim plaintiff/defendant started construction of a house in the counter claim A schedule property, the plaintiffs/counter claim defendants have attempted obstruct the counterclaim B schedule way by depositing building waste in the counterclaim B schedule way. The defendant /counter claim plaintiff had approached the RDO Kollam on 15/03/2016 and on the basis of complaint filed by the defendant/counterclaim plaintiff, the Village Officer Sasthamcotta visited the place on 21.05.2016 and prepared a report and rough sketch. Since the plaintiff/ counter claim defendant has attempted to obstruct the counter claim B schedule way, the defendant/ counter claim plaintiff filed this counter claim for declaring easement by grant over counter claim B schedule way and also for permanent prohibitory injunction.

6. On the basis of above rival pleadings, the following issues are framed.

- (i) Whether the plaintiff is facing threat of invasion of plaintiff schedule property as prayed for?
- (ii) Whether the plaintiff is entitled for permanent prohibitory injunction as prayed for?
- (iii) Whether the defendant/counter claim plaintiff has easement by grant over counter claim B schedule way as prayed for?
- (iv) Whether the defendant/counterclaim plaintiff is entitled for permanent prohibitory injunction as prayed for ?
- (v) Relief and costs?

7. When the case was posted for trial the plaintiffs did not turn up. Hence the suit is dismissed. The defendant/counter claim plaintiff filed affidavit in lieu of chief examination. Exts.B1 to B3 marked in evidence. Ext. B1 is the title deed of the counter claim A schedule property and there is description in it regarding the counter claim B schedule way and the right of user of it by the defendant/counter claim plaintiffs. Ext.B2 is the tax receipt in respect of counter claim A schedule property. Exts.B1 and B2 reveals that the defendant/counter claim plaintiff is the owner in possession of counter claim A schedule property. Ext.B1 further reveals that the defendant/counter claim plaintiff has easement by grant over the counter claim B schedule way. Ext.B3 (series) are the report submitted by Village Officer Sasthamcotta to the Tahasildar Kunnathoor, rough sketch of counterclaim B schedule way and Thandaper Extract of counter claim A schedule property. Ext.B3 also proves existence of counter claim B schedule way. There is no challenge against the evidence adduced by the defendant/counter claim plaintiff as the plaintiff/counter claim defendant stayed away from the proceedings. In the result, the defendant/counterclaim plaintiff is entitled for the reliefs claimed.

8. In the result suit dismissed and counter claim decreed as follows:-

(i) The defendant/counter claim plaintiffs have easement by grant over counterclaim B schedule way.

(ii) The plaintiffs/counter claim defendants and persons under them are restrained by a permanent prohibitory injunction from causing any obstruction to user of counter claim B schedule way by the defendant/counter claim plaintiffs.

(iii) Considering the facts and circumstances of the case, there is no order as to costs.

(Dictated to the Confidential Assistant, typed by him, corrected and pronounced by me in open court, this the 22nd day of August, 2023.)

Sd/-

ANIL KUMAR T. S.
MUNSIFF

APPENDIX :

Exhibits marked from the side of Plaintiffs: NIL

Exhibits marked from the side of Defendants :

B1	-	28/06/1999	-	Certified copy of sale deed No.2117/1999 of SRO, Sasthamcottta
B2	-	15/07/2023	-	Tax receipt
<u>B3 (series)</u>				
B3	-	-	-	Copy of Thandaper register No.711

- | | | | |
|---------|------------|---|---|
| B3(a) - | - | - | Copy of Thandaper register No.8528. |
| B3(b) - | - | - | Copy of location sketch |
| B3(c) - | 21/05/2016 | - | Report submitted by Village Officer, Sasthamcotta to Tahsildar, Kunnathoor. |

Court Exhibit : NIL.

Witnesses examined from the side of Plaintiff :NIL

Witnesses examined from the side of Defendant

DW1 - 24/07/2023 - Kabeer Kutty

//True copy//

Id/-
MUNSIFF

MUNSIFF

Typed by: Savitha.S
Compd.by: