

IN THE COURT OF THE MUNSIFF- MAGISTRATE, SASTHAMCOTTA.

Present : Sri. ANIL KUMAR T. S., CIVIL JUDGE (JUNIOR DIVISION)

Thursday the 27th day of February, 2025
8th day of Falguna, 1946

OS. 212/2014

Between

Plaintiffs:-

- 1) Viswanathan Pillai, aged 61 years,
S/o. Madhavan Pillai,
Aswathy, Adinadu North P. O.,
Adinadu North Muri,
Adinadu Village,
Karunagappally Taluk.
- Addl. P2) Chandrikayamma,
W/o. Viswanathan Pillai,
Aswathy, Adinadu North P. O.,
Adinadu North Muri,
Adinadu Village,
Karunagappally Taluk.
- Addl. P3) Veena Nadh,
D/o. Viswanathan Pillai,
Aswathy, Adinadu North P. O.,
Adinadu North Muri,
Adinadu Village,
Karunagappally Taluk.
- Addl. P4) Vijith,
S/o. Viswanathan Pillai,
Aswathy, Adinadu North P. O.,
Adinadu North Muri,
Adinadu Village,
Karunagappally Taluk.

Addl. P5) Vaijith,
S/o. Viswanathan Pillai,
Aswathy, Adinadu North P. O.,
Adinadu North Muri,
Adinadu Village,
Karunagappally Taluk.

(Impleaded as per order in IA. 1422/19 dated
14/12/20)

(By Adv. Sri. Dominic Basil)

And

Defendant:-

George Vaidyan, aged 58 years,
S/o. Koshy Vaidyan,
Thengumvilayil Veedu,
Thevalakkara P. O.,
Kizhakkekara Muri,
Mynagappally Village.

(By Adv. Sri. Saiju Koshy)

(Defendant set exparte)

COUNTER CLAIM IN OS. 212/2014

Between

Counter Claim Plaintiff
Defendant

:-

George Vaidyan, aged 58 years,
S/o. Koshy Vaidyan,
Thengumvilayil Veedu,
Thevalakkara P. O.,
Kizhakkekara Muri,
Mynagappally Village.

(By Adv. Sri. Saiju Koshy)

And

Counter Claim Defendants :-
Plaintiffs

- 1) Viswanathan Pillai, aged 61 years,
S/o. Madhavan Pillai,
Aswathy, Adinadu North P. O.,
Adinadu North Muri,
Adinadu Village,
Karunagappally Taluk.
- 2) Chandrikayamma,
W/o. Viswanathan Pillai,
Aswathy, Adinadu North P. O.,
Adinadu North Muri,
Adinadu Village,
Karunagappally Taluk.
- 3) Veena Nadh,
D/o. Viswanathan Pillai,
Aswathy, Adinadu North P. O.,
Adinadu North Muri,
Adinadu Village,
Karunagappally Taluk.
- 4) Vijith,
S/o. Viswanathan Pillai,
Aswathy, Adinadu North P. O.,
Adinadu North Muri,
Adinadu Village,
Karunagappally Taluk.
- 5) Vaijith,
S/o. Viswanathan Pillai,
Aswathy, Adinadu North P. O.,
Adinadu North Muri,
Adinadu Village,
Karunagappally Taluk.

(By Adv. Sri. Dominic Basil)

This suit and counter claim are coming on for final hearing before me on 27/02/2025 and on the same day the court delivered the following:-

J U D G M E N T

Suit for fixation of boundary and injunction.

2. The plaint averments in short are as follows:- The plaintiff purchased the plaint A schedule property, having an extent of 6.07 Ares from the defendant as per sale deed number 725 dated 14.03. 2001. The plaint schedule property was part and parcel of the 42 cents of property owned by the defendant. The property now in possession of the defendant is described as plaint B schedule property. The plaintiff is residing away from the plaint A schedule property and taking advantage of his absence, the defendant encroached upon the plaint schedule property and committed wastes there. On 24.08.2014, the defendant removed the boundary stones on the north and east boundaries of the plaint schedule property and attempted to commit waste there. The plaintiff got reliable information that the defendant is taking steps to repeat his wanton acts. In the above circumstances, this suit is filed seeking the reliefs of fixation of boundary and injunction.

3. The defendant filed written statement along with counterclaim, contending as follows:- The defendant is the owner in possession of the 42 cents of property including the plaint schedule property. He has not sold the property to anybody and he has no knowledge regarding the sale deed relied on by the plaintiff. The sale deed produced by the plaintiff is a

forged one. The plaintiff who is residing in another Taluk has no reason to buy the plaint schedule property. The defendant was a Government Contractor and he had borrowed Rupees 1.5 Lakh from the plaintiff after issuing cheques and other documents in favour of the plaintiff. He repaid the borrowed amount but, the plaintiff demanded exorbitant interest. Since defendant refused to pay the exorbitant interest as demanded by the plaintiff, he has developed enmity towards the defendant. In order to wreak vengeance, the plaintiff created the sale deed which is false and fabricated and it is liable to be declared as null and void. The defendant has also raised counterclaim for declaring the sale deed produced by the plaintiff as null and void and for declaration of title of the plaint schedule property.

4. When the case was posted for trial, the defendant did not appear. Hence, the defendant was set ex parte.

5. To substantiate the contentions, the plaintiff filed affidavit in lieu of chief examination wherein the plaint averments have been re iterated. Exts A1 to A8, Exts C1, C2 and C2(a) are marked. Ext A1 is the sale deed executed by the defendant and Exts A3 and A4 are its prior title documents. Ext A2 is latest tax receipt. Exts A5 and A6 are the encumbrance certificates and Ext A7 is the possession certificate. Ext A8 is the re survey plan. The above documents reveal that the plaint schedule property is the possession and enjoyment of the plaintiff. In Ext C1 commission report, it is reported that there is no boundary separating the plaint A and B schedule properties, which gives rise to a cause action for the relief of fixation of boundary. Ext C2 and C2 (a) are the Survey

commission report and plan. In Ext C2 (a) plan, the plaint A schedule property is shown by letters *b c d e o n b* and its extent is 6.06 Ares. The plaint B schedule property is shown by letters *n o e f g h i m n* and its extent is 11.02 Ares. The line shown by *n o e* is the boundary dividing the plaint A and B schedule properties. The plaintiff adduced evidence to prove that he is the title holder of the plaint A schedule property and that the plaint A schedule property is in his possession and enjoyment. In the absence of any evidence to the contrary, the reliefs sought can only be granted.

6. In the result suit is decreed as follows and the counterclaim is dismissed.

- i) The line shown by letters *n o e* shown in Ext C2(a) plan shall be the boundary between plaint A and B schedule properties. The plaintiff is at liberty to put up permanent boundary through the above line.
- ii) The defendant and persons privy to him are restrained by a permanent prohibitory injunction from trespassing upon the plaint A schedule property, from causing damages to its boundaries and from committing any waste there.
- iii) Ext C2 (a) plan shall form part of the decree.

(Dictated to the Confidential Assistant, typed by him, corrected and pronounced by me in open court, this the 27th day of February, 2025.)

Sd/-
ANIL KUMAR T. S.
CIVIL JUDGE (JUNIOR DIVISION)

APPENDIX :**Exhibits marked from the side of Plaintiffs:-**

- A1 - 14/03/2001 - The Original Sale Deed No. 725/2001 of SRO, Karunagappally.
- A2 - 10/06/2024 - Tax Receipt issued from Village Office, Mynagappally.
- A3 - 04/01/2001 - The Original Sale Deed No. 48/2001 of SRO, Karunagappally.
- A4 - 06/07/2000 - The Original Sale Deed No. 2105/2000 of SRO, Karunagappally.
- A5 - 07/07/2000 - Encumbrance Certificate.
- A6 - 05/01/2001 - Encumbrance Certificate.
- A7 - 08/08/2014 - Possession Certificate issued from Village Officer, Mynagappally.
- A8 - 18/06/2018 - Re-Survey Plan issued from Village Officer, Mynagappally.

Exhibits marked from the side of Defendant:- Nil

Court Exhibits:-

- C1 - 26/09/2014 - Commission Report prepared and submitted by Commission Advocate Sri. N. Sadasivan.
- C2 - 27/05/2019 - Commission Report prepared and submitted by Commission Advocate Sri. Rajan Elavinal
- C2(a) - 12/12/2018 - Plan Prepared and submitted by Surveyor Smt. Ajitha. K. S.

Witnesses examined from the side of Plaintiffs:-

PW1 - 04/02/2025 - Chandrikayamma.

Witnesses examined from the side of Defendant:- Nil

Id/-
CIVIL JUDGE (JUNIOR DIVISION)