

IN THE COURT OF THE MUNSIFF, KARUNAGAPPALLY.
Present:- Sri.Praveen Kumar.G, BA.L, LL.B, Munsiff.
Thursday, the 16th day of July, 2020/the 25th day of Ashadam,
1942.

I.A No.01/2020 in O.S.No.163/2020

Between

Petitioner/Plaintiff:-

Hashim, aged 40 years, S/o.Abdul Azeez,
Thottukara Veedu, Kozhikkodu Kizhakkum
Muri, S.V Market P.O, Ayanivelikulangara
village, Karunagappally taluk

By Adv: Rajeev Rajadhani

And

**Counter petitioners/
Defendants:**

1. Shihab @ Super Shihab, aged 39 years,
S/o.Haneefa, Thottukara padeettathil,
Kozhikkodu Kizhakku Muri,
S.V Market P.O, Ayanivelikulangara village,
Karunagappally taluk
2. Suresh Babu @ Raju, aged 50 years,
S/o.Viswanathan, Ampadiyil veedu,
Kozhikkodu Kizhakku Muri,
S.V Market P.O, Ayanivelikulangara village,
Karunagappally taluk
3. Santhosh, aged 50 years,
S/o.Gangadharan, Thyvilakath,
Kozhikkodu Kizhakkum Muri,
S.V Market P.O, Ayanivelikulangara village,
Karunagappally taluk

4. Shihab, aged 31 years, S/o.Muneer,
Puthenkulangara kizhakkathil,
Kozhikkodu Kizhaku Muri, S.V Market
P.O, Ayanivelikulangara village,
Karunagappally taluk

5. Surendran, aged 57 years, S/o.Nanu,
Kampara kizhakkathil, Kozhikkodu
Kizhaku Muri, S.V Market P.O,
Ayanivelikulangara village,
Karunagappally taluk

6. Sajith, aged 40 years, S/o.Thangalkunju,
Panayara veedu, Kozhikkodu Kizhaku
Muri, S.V Market P.O, Ayanivelikulangara
village, Karunagappally taluk

By Adv.Soorajkumar.T.S for D3

This petition filed under order 39 Rule 1 of CPC for injunction.

This petition coming on for final hearing before me on 16.07.2020 and on the same day the court passed the following.

ORDER

1. Application under Order XXXIX Rule 1 C.P.C for issuance of a temporary prohibitory injunction, filed by the plaintiff in the suit. Parties are referred to as the plaintiff and the defendants, as they appear in the suit.

2. Plaintiff's case, briefly stated, is thus :-

Plaintiff is the owner in possession of the plaint schedule property, which is well demarcated from the adjoining properties by definite boundaries. Plaintiff's mother is a building contractor by profession, engaged in the work of roads, buildings etc. within the limits of the Karunagappally Municipality. Due to old age, she is unable to supervise the works and therefore, she executed a power of attorney in favour of the plaintiff. Accordingly, the plaintiff had been undertaking the works and for this, he used to store the construction materials including M sand, metal etc. in the plaint schedule property, without causing any nuisance to the adjoining owners. The construction materials are brought to the site in his vehicles. From the plaint schedule property, the materials would be taken to the respective work sites. It is alleged that the defendants are people of the locality and they are attempting to obstruct the plaintiff all throughout. It is stated that they have been trying to drain waste materials into the property and trespass into the same with intent to commit mischief. On this apprehension, the suit was laid, for a temporary injunction to restrain the defendants from trespassing into the plaint schedule property, committing any wastes therein, destroying the construction materials kept in the property and from obstructing the vehicles in which the materials are taken. Exactly the same prayer is sought for as an interim measure vide this application.

3. The suit was filed on 08-06-2020 and the same day, an ad-interim exparte injunction order was passed, restraining the defendants and men under them from trespassing into the plaint schedule property, committing mischief and from obstructing the transportation vehicles plying to and from the plaint schedule property or from dumping wastes until further orders.

4. The defendants, on notice, appeared. They jointly filed a statement of objections, contending that the plaint schedule property is a "*nilam*" and the plaintiff's attempt is to unlawfully reclaim the same. According to the defendants, by suppressing this very material fact, the suit has been filed. It is also alleged that the plaintiff has been transporting minerals to and from the plaint schedule property in violation of the Provisions of the Kerala State Mineral (Prevention of Illegal Mining, Storage and Transportation) Rules, 2015. The defendants have yet another case that the act of the plaintiff in stocking materials in the plaint schedule property causes nuisance to the people of the locality and it creates health hazard to them.

5. Exts. A1 to A14 from the side of the plaintiff and Exts. B1 to B7 from the side of the defendants, along with Ext. C1 commissioner's report and C1(a) rough sketch, have been marked for the purpose of this interim application.

6. Heard both sides.

7. Following points arise for consideration:-

1. Has the plaintiff shown a prima facie case?
2. Whether balance of convenience is in his favour?
3. Whether irreparable injury and loss would be sustained to him, if injunction is not granted?
4. Is he entitled to an order of temporary injunction as prayed for?
5. Order.

8. Points 1 to 4:

It is admitted that the plaintiff is the owner of the plaint schedule property, which is described as an extent of 7.60 Ares of property in Re sy 521/11 of Ayanivelikulangara Village. Ext.A1 sale deed dated 13-04-1998, Ext.A2 tax receipt dated 02-06-2020 and Ext.A3 possession certificate dated 02-06-2020, in any case, establish this. While seeking a possessory remedy of permanent prohibitory injunction against trespass like the one herein, what counts material is the actual physical possession of the claimant. The plaintiff in this case has a case that he is in possession of the plaint schedule property as well, which is well demarcated on all sides from the adjoining properties. This aspect too is never disputed on behalf of the defendants. Therefore, we will straight away proceed to the material rival contentions.

9. The substantial contention of the defendants is that the plaint schedule property is a wet land (*nilam*) and the suit has been filed by suppressing this material fact. The attempt of the plaintiff is

to reclaim the *nilam* somehow or other, it is alleged. The plaintiff has illegally stored construction materials, which are minerals, in the property without any requisite license in that regard, and it is contrary to the provisions laid down in the Kerala State Mineral (Prevention of Illegal mining, Storage and Transportation) Rules, 2015, it is further alleged.

10. The plaintiff has a definite case that his mother is a building contractor by profession, engaged in the works of roads and buildings within the limits of the Municipality, Karunagappally. It is alleged that due to her old age, she is unable to supervise the works and therefore, she has executed a power of attorney in favour of the plaintiff. Ext.A4 is the contractor's registration card issued in the name of the plaintiff's mother and Ext.A5, the power of attorney dated 09.03.2020 executed by her in favour of the plaintiff. It is the case of the plaintiff that the materials used for the construction works are being stored in the plaint schedule property and those materials would be taken to the respective work sites in his vehicles, the registration certificates of which have been produced and marked as Exts. A7 to A9. Ext.A6 constitutes certain acknowledgment forms of handing over of the site to the contractor. According to the plaintiff, the defendants are people of the locality and they have been trying to obstruct the vehicles coming to the plaint schedule property with the construction materials. Ext.A10 is a copy of the petition the plaintiff gave to the local Police Station against this. Ext.A11 is a copy of the photograph of the plaint

schedule property. The plaintiff has a case that the defendants have been trying to trespass into the property as well and drain waste materials into it. The defendants, apart from propounding a case of violation of Municipal Laws, contend that the conduct of the plaintiff in storing and transporting construction materials including sand, granite pieces etc. causes nuisance to the people of the locality, including children and it poses as a health hazard to the entire locality. Exts. B1 to B4 are the petitions allegedly preferred on behalf of the public against this act of the plaintiff.

11. Defendant's case that the plaint schedule property is included in the data bank of the The Kerala Conservation of Paddy Land and Wet Land Act, 2008 finds support from Exts. B5 to B7 documents. Ext. B5 is a report dated 25-05-2020 issued by the Village Officer, Ayanivelikulangara. Ext. B6 is a report dated 29-06-2020 submitted by the Thahasildar, Karunagappally, before the Revenue Divisional Officer, Kollam. Ext. B7 seems to be the draft data bank of the Ayanivelikulangara Village, wherein the property herein finds a place. Exts. A1 to A3 documents, which have been referred to earlier, in any case, make it clear that the plaint schedule property partakes the nature of a "wet land". These aspects, however, must yield to the nature and peculiarity of the land as of now. It is the common case of either side that on the plaint schedule property, building and construction materials have been stocked. As the learned counsel for the plaintiff rightly pointed out, the defendants have admitted the existence of a compound

wall on the plaint schedule property atleast by the side of the 2nd defendant's property. Ext.B2 to B6 documents produced on behalf of the defendants explicitly make it clear that the property has, by now, been reclaimed. Ext.C1 commission report too speaks of the existence of yielding trees thereon, which are aged about 15 years as of now. Ext.C1, in addition, states that the property now lies as a *purayidam* (dry land), which is firm and hard. In addition, Ext.A12 certificate of the Agricultural Officer, Karunagappally dated 06-02-2018 and Ext.A13 certificate issued by the Village Officer, Ayanivelikulangara, also suggest that the property lies as a *purayidam* as of now. In Ext.A12, it is stated that the property was reclaimed prior to 2005. This aspect, coupled with the observations made by the Advocate Commissioner vide Ext.C1, prima facie indicates that the property, though stood as a wet land at one point of time, got reclaimed, even prior to the introduction of the Wet land and Paddy Land Act on 12.8.2008. Significantly, the defendants have no case that the reclamation was done by the plaintiff subsequent to the notification of the Act. If actually, the land was converted into its present state prior to it, the prohibitions thereof cannot stand in the way of the plaintiff's case.

12. Adverting to the contention of violation of Kerala State Mineral (Prevention of Illegal Mining Storage and Transportation) Rules, the learned counsel for the plaintiff strenuously contended that the Rules will not apply herein, as the plaintiff has been storing the construction materials, not for any “commercial purposes”, but

for unloading it at the respective sites, for which licenses have been obtained. Ext.A14 is a letter issued by the Karunagappally Builders and Developers Labour Contract Co-operative Society to the plaintiff herein, authorizing him to stock the construction materials as aforesaid. It is the case of the plaintiff's counsel that Rule 3 of the Rules, which has been pressed into service on behalf of the plaintiff, applies only to the storage of minerals for "commercial purposes". If there be any violation, as the defendant's contend, the appropriate authority would have initiated prosecution proceedings against the plaintiff by this time, it is submitted.

13. The Kerala Minerals (Prevention of Illegal Mining, storage and transportation) Rules, 2015, have been enacted in exercise of the powers conferred by Sub section 1 of Section 23(c) of the Mines and Minerals (Development and Regulation) Act, 1957, which deals with prevention of illegal mining, transportation and storage of minerals. Section 2(x) of the Rules defines mineral products to mean minerals in any raw or processed form, dressed rocks, rock aggregates, chips, ballast, rock dust produced in granite metal crusher units, lime shell / or any product prepared from minerals without involving any chemical change. There is no case before me that the construction materials herein do not constitute "minerals" or "mineral products" as aforesaid. The only point the learned counsel for the plaintiff argued being that the prohibition applies only for the storage and transportation of minerals for "commercial purposes". Rule 3 of the Rules deals with certain prohibitions. Rule 3(1)

provides that no person other than the lessee or holder of a quarrying permit or movement permit under the Kerala Minor Mineral Concession Rules, 2015 or Granite Conservation and Development Rules, 1999 or mining lease under Mineral Concession Rules, 1960 shall stock, sell or offer sale for commercial purposes or trade any mineral or mineral products mentioned in Schedule I of Kerala Minor Mineral Concession Rules, 2015 or in Schedule II of the Mines and Minerals(Development and Regulation)Act, 1957, in the state without holding a dealer's license under these rules. Therefore, it seems that the restraint to stock minerals is for commercial or trade purposes and nothing else. We are short of materials now, to uphold a case that the activity herein constitutes commercial purposes, as it is the definite case of the plaintiff that the materials are brought to the plaint schedule property, stored therein and taken to the sites exclusively for the purpose of the contract works undertaken by the plaintiff. Of course, the defendants have a case to the contrary, for which, however, prima facie no materials are forthcoming. But, even taking the case out of the scope of Rule 3(1), Rule 3(3) definitely militates against the plaintiff. Rule 3(3) specifically provides that no person shall transport or caused to be transported any mineral or mineral products by any carrier without having a valid mineral transit pass under these rules. A mineral transit pass is defined under Rule 2(xi) to mean a transit pass issued by the authorized officer under this rules for transportation of minerals from one place to another. It is

therefore, clear that the act of storage and taking of materials to and from the plaint schedule property and the work sites clearly falls within the teeth of the aforesaid prohibition. The licenses now produced on behalf of the plaintiff do not enable him in this regard. Exhibit A4 is a mere Contractors' Registration card. Ext A6, as stated, are certain acknowledgment forms in respect of handing over of the work sights to the contractor. Though in Ext A14 letter, the plaintiff has been authorised to stock materials, that can only be in true with the rules and regulations in force. So, that document too will not aid the plaintiff. There is no case for the plaintiff that he has obtained a valid mineral transit pass, as the Rules prescribe. That the plaintiff has not been, on the other hand, enabled with any such license is explicit from Ext.B5 to B6 documents. That no prosecution proceedings have been initiated against the defendants on account of this is no ground to uphold their conditions in that regard. While granting an ad interim injunction on 8.6.20, the plaintiff is seen permitted to store and transport the construction materials as well. However, if that be allowed to continue, it would amount to stamping an illegality with the seal of the court. Therefore, on that short score, the ad interim injunction order requires interference and consequent modification, which alone seems to be the request on behalf of defendant's counsel as of now.

14. The plaintiff has a definite case that the defendants have been trying to trespass upon the plaint schedule property and drain waste materials into it. This conduct of the defendants is clear

from Ext.C1 Commissioner's report. It is stated that two waste water pipes from the 2nd defendant's property protrude into the plaintiff schedule property. In addition, the water from the terrace portion also falls into the plaintiff schedule property. As we have already seen, the plaintiff is the owner in possession of the plaintiff schedule property and his apprehension of committal of waste therein is well established from the materials on record. Even the rival pleadings on record suggest that there is a tensed atmosphere in the area with altercation and scuffle for and against. The defendants' contentions, when read as a whole, would disclose that they in fact are in a bid to resist the activities, which according to them are illegal, taking place in the plaintiff schedule property. I am of the definite opinion that the conduct of the defendants too will prima facie justify the apprehension raised on behalf of the plaintiff. On the other hand, there cannot be inference of any nuisance from the plaintiff schedule property, the same being bounded by nets of 20 feet height, as noted in Ext.C1. In that respect, I find that the plaintiff has presented a prima facie case for trial. It seems that if injunction is not granted, the defendants would be enabled to continue the mischief in the plaintiff schedule property to the detriment of the plaintiff. On the other hand, if injunction is granted, the defendants would be debarred from taking the law into their hands and nothing else. So, balance of convenience is also in favour of the plaintiff. It is clear that if injunction is not granted, irreparable injury and loss would be sustained to the plaintiff. Learned counsel for the

defendants fairly conceded that he has no objection in continuing with the order of restraint against trespass and committal of waste. Therefore, I decide to grant a temporary injunction as prayed for, but with a modification of the ad-interim order dated 08-06-2020, specifically debarring the plaintiff from transporting construction materials to and from the plaint schedule property and stocking the same thereon without obtaining requisite licenses in that regard. Having regard to the apprehension on behalf of the defendants, notwithstanding that the suit is laid against six individuals, I make it clear that this order will not stand in the way of the competent authorities proceeding against the plaintiff, in case, violation of any law/rules including The Kerala Conservation of Paddy land and wet land Act 2008 or The Kerala Minerals (Prevention of illegal mining, storage and transportation) Rules 2015 or any other Act/Rule is involved.

15. Point No.5 :

1. The defendants or men under them are restrained from trespassing into the plaint schedule property or from committing any wastes therein till the disposal of the suit.
2. Parties, being neighbours, will suffer their respective costs.
3. Application is allowed as above.

Dictated to the Confidential Assistant, transcribed and typed by her, corrected and pronounced by me in open court on this the 16th day of July, 2020.

Sd/-
Praveen Kumar.G,
Munsiff.

Appendix

Exhibits marked on the side of the petitioner:-

A1	23.04.1998	Sale deed No.1006/1998 in the name of Hashim
A2	02.06.2020	Tax receipt issued by Ayanivelikulangara village
A3	02.06.2020	Possession certificate executed by Village Officer, Ayanivelikulangara
A4		Photocopy of contractors registration card in respect of Rasheeda Beevi
A5	15.05.2020	General power of attorney in favour of Sri.Hashim
A6	31.03.2020	Photocopy acknowledgment forms of handing over of the work sights to the contractor
A7		Photocopy of certificate of registration with Reg.No.KL-23-Q8342 in favour of Abdul Azeez
A8		Photocopy of certificate of registration with Reg.No.KL-47-C-4222 in the name of Rasheeda Beevi

- A9 Photocopy of certificate of registration with Reg.No.KL-25-C-4820 in favour of Rasheeda Beevi
- A10 29.05.2020 Photocopy of complaint submitted by Hashim.D before SHO, Karunagappally
- A11 Copy of photograph of car
- A12 06.02.2018 Certificate issued by Agricultural Officer, Karunagappally in favour of Hashim.D
- A13 18.07.2014 Photocopy of certificate issued by Village Officer, Ayanivelikulangara
- A14 A letter issued by the Karunagappally Builder and Developers Labour Contract Co-operative society

Exhibits marked on the side of the counter petitioners:-

- B1 04.06.2020 Photocopy of mass petition produced before Municipal Secretary, Municipality Karunagappally
- B2 01.06.2020 Photocopy of application produced before the Tahsildar, Karunagappally taluk submitted by G.Santhoshkumar
- B3 Photocopy of mass complaint produced before SHO, Karunagappally
- B4 19.05.2020 Photocopy of mass complaint produced before Village Officer, Ayanivelikulangara

B5 25-05-2020 True copy of report submitted by the Village Officer, Ayanivelikulangara to the taluk office, Karunagappally

B6 29-06-2020 Photocopy of report submitted by the Tahsildar, Karunagappally to the Revenue Divisional Officer, Kollam

B7 True copy of draft data bank of Ayanivelikulangara village

Court Exhibits:-

C1 08-07-2020 Mahazor report submitted by Adv.S.Prahladan, Advocate commissioner

C1(a) Rough sketch appended with commission report

Id/-

Munsiff.

//True Copy//

MUNSIFF

Copied by : Jyothilekshmy.R

Compared by :