

IN THE COURT OF THE MUNSIFF, KARUNAGAPPALLY.

Present:- Sri.Praveen Kumar.G, BA.L, LL.B, Munsiff.

Tuesday, the 29th day of March, 2022/the 08th day of Chaithram, 1944.

I.A No.06/22 in O.S No.331/2021

Between

- Petitioners/Defendants:-**
1. Sureshkumar, aged 58 years,
S/o.Gopalan Nair, Kandolil veedu,
Kallelibhagom muri, Kallelibhagom village
 2. Sarath, aged 29 years,
S/o.Sureshkumar,Kandolil veedu,
Kallelibhagom muri, Kallelibhagom village
 3. Sathyaprakash, aged 48 years,
S/o.Gopalan Nair, Kandolil veedu,
Kallelibhagom muri, Kallelibhagom village

By Adv.Sri.Sethukrishnan.S

And

- Respondents/Plaintiffs:-**
1. Ajitha Prasad, aged 50 years,
W/o.Sivaprasad, Kandolil veedu,
Kallelibhagom muri, Kallelibhagom village
 2. Sreedhu Prasad, aged 24 years,
S/o.Sivaprasad, Kandolil veedu,
Kallelibhagom muri, Kallelibhagom village

By Adv.Sri.V.R.Abhilash

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

This petition having been finally heard on 21.03.2022 and on 29.03.2022, the court passed the following.

ORDER

Application filed by the defendants in the suit, for issuing a temporary prohibitory injunction. Respondents in the application are the plaintiffs in the suit. Parties, for the sake of more clarity, are referred to as the “plaintiffs” and the “defendants”, as they appear in the suit.

2. The suit is seen instituted by the plaintiffs claiming a decree perpetual injunction against trespass and commission of wastes in the plaint schedule property, said to be owned by the plaintiffs. It is pleaded in the plaint that, the defendants reside on the western side of the plaint schedule property and they have a pathway of width one meter through the southern side of the plaint schedule property in the east-west direction to reach the public road on the eastern side. The suit has been laid on the apprehension that the defendants attempted to trespass into the plaint schedule property with a view to carve out a new pathway through it.

3. Along with suit, the plaintiff filed IA 01/21 seeking an order of temporary prohibitory injunction. On 10.11.2021 itself, an ad-interim injunction was granted, restraining the defendants from trespassing into the plaint schedule property, demolishing the boundaries around it or increasing the width of the existing pathway on the southern side of the plaint schedule property until further orders.

4. Notice was issued on the application and the defendants entered appearance. On 28.02.2022, they filed the instant application seeking an order of temporary prohibitory injunction restraining the plaintiffs from closing down the defendants' pathway, scheduled as the petition C schedule property, which is alleged to be having a width of 2.5 metre. The defendants claim a right of way through such a pathway by grant. Injunction has been claimed on the allegation that the plaintiffs, by instituting the suit, attempted to construct compound wall thereby obstructing the defendants' right of way.

5. To the application, the plaintiffs filed a statement of objections contending *inter alia* that the defendants have right of way at a width of only one meter, and the plaintiffs have not obstructed the said right in any manner whatsoever. It is also pointed out that the defendants herein instituted OS 361/2021 in this court, claiming a right of way of width of one meter through the southern side of the plaint schedule property and therefore, they are estopped now, from claiming a width of 2.5 meters.

6. Though the defendants have filed a statement of objections to IA 01/2021, the said application is neither sought to be heard, nor the ad-interim order of injunction requested to be vacated as of now. Thus, IA 06/22 alone has been heard.

7. Exts.A1 and A2 (on behalf of plaintiffs) and Exts.B1 to B9 (on

behalf of defendants), along with Exts.C1 and C1(a), have been marked for the purpose of the application.

8. Heard both sides and perused records.

9. It is admitted that the plaintiffs are the owners in possession of the plaint schedule property and the defendants' own property on its western side. The plaintiffs have admitted that the defendants have a right of way through the southern side of the plaint schedule property to reach their property, presumably as a grant. While the plaintiffs contend that the width of the pathway is only one meter, the defendants say that the width is 2.5 meter. Thus, evidently, the width of the pathway is the substantial fact in issue to be adjudicated.

10. Though on behalf of the defendants, a plethora of title deeds, Exts. B1 to B6, have been produced, the learned counsel for the defendants fairly conceded that none of the above documents speak about the width of the way. So as to what is the width the parties really intended is essentially a matter of evidence. At this stage, the materials on record fall short of upholding the defence version in this regard. Exts.C1 commission report and C1(a) plan appended to it speak of the width in existence as 1.3 meter only, which has been identified by the advocate commissioner on the basis of a survey stone and compound wall aged 1 ½ years. There cannot be an inference from the commission report that any vehicles could be taken through the pathway, as the

defendants contend all through out. Moreover, by instituting OS 361/2021, claiming a width of one meter alone, the defendants have estopped themselves from claiming width anything more than one metre. So much so, I am unable to uphold a prima facie case so far as the defendants are concerned. As such, their claim for temporary prohibitory injunction will not sustain.

11. Application is dismissed with costs of the defendants.

(Dictated to the Confidential Assistant, transcribed and typed by him, corrected and pronounced by me in open court on this the 29th day of March, 2022).

Sd/-
Praveen Kumar.G,
Munsiff.

Appendix:-

Exhibits marked for the side of plaintiffs:-

A1	18.04.2015	Photocopy of sale deed No.973/15 executed by Sathyaprakash in favour of Sivaprasad
A2	08-11-21	Tax receipt issued by Kallelibhagom Village office during the financial year 2021-22

Exhibits marked for the side of defendants:-

B1	05-06-2013	Photocopy of sale deed executed by Sankaran Pillai in favour of Krishnan
B2	03-07-02	Photocopy of settlement deed No.2261 executed by Gopalan Nair in favour of Sureshkumar and Omana

B3	06-04-98	Photocopy of settlement deed No.1022/98 executed by Gopalan Nair in favour of Satheesh Chandran
B4	01-03-97	Photocopy of sale deed No.629 executed by Sheelakumari in favour of Sivaprasad
B5	23-02-1999	Photocopy of sale deed No.621/1 executed by Sheelakumari in favour of Thankamma Daniel
B6	25-07-2002	Photocopy of sale deed No.2551/02 executed by Satheesh Chandran in favour of P.N.Leelabhai
B7	06-12-2021	Photocopy of complaint submitted by Sureshkumar before SHO, Karunagappally
B8	16-02-22	Photocopy of complaint submitted by Sureshkumar before Assistant Commissioner of Police, Karunagappally
B9 (series 7 in numbers)		Copy of photographs

Court Exhibits:-

C1	19-11-21	Commission report submitted by Adv.Swathi.S
C1(a)	19-11-21	Rough sketch attached to the commission report

Id/-
Munsiff.

//True Copy//

MUNSIFF

Typed by : Jyothilekshmy.R
Compared by :