

IN THE COURT OF THE MUNSIFF, KARUNAGAPPALLY

Present: Smt Aswathy Nair, Munsiff,

Saturday 31st day of August, 2024 8th day of Bhadram, 1946.

OS.No.200/2018

Between
Plaintiffs:

1. Savithri, aged 57 years,
W/o Vasudevan, Puthenkandathil,
Namparuvikala Muri, Karunagappally Village.
2. Abhirami (Minor),
D/o Ambili,
-do -
represented by her mother.
3. Ambili, aged 34 years,
D/o Savithri, Puthenkandathil,
- do -

By Adv.V.R.Pramod.

And

Defendants:

1. Surendran, aged 45 years,
S/o Nanu, Kochuveetil Padeettathil,
Thekkum Muri, Maruthoorkulangara,

Karunagappally Village.

2. Babukuttan, aged 54 years,
S/o Madhavan Pillai,
Chaithanya, Kappil Mekku Muri,
Krishnapuram Village, Karthikappally Taluk,
Alappuzha District.

For D1&D2- By Adv.P.K.Sudheer.

This suit filed under Section 26 Order VII Rule 1 of the Code of Civil Procedure for permanent prohibitory injunction.

Counter Claim in OS 200/2018

Counter Claim
Plaintiff/Original
2nd defendant.

Babukuttan, aged 54 years,
S/o Madhavan Pillai,
Chaithanya, Kappil Mekku Muri,
Krishnapuram Village, Karthikappally Taluk,
Alappuzha District.

By Adv.P.K.Sudheer.

Counter
Defendants/Original
Plaintiffs.

1. Savithri, aged 57 years,
W/o Vasudevan,
Puthenkandathil,

Namparuvikala Muri, Karunagappally Village.

Abhirami (Minor),
D/o Ambili,
-do -
represented by her mother.

Ambili, aged 34 years,
D/o Savithri,
Puthenkandathil,
- do -

By Adv.V.R.Pramod.

Counter claim filed by petitioner for counter claim reliefs.

This suit coming for final hearing before me on 23/8/2024 and 31/8//2024
On 31/8/2024 the court delivered the following:

JUDGMENT

Suit is for permanent prohibitory injunction

2. The plaint averments can be summarised as follows:-- 2nd plaintiff is the grand daughter of the 1st plaintiff. 2nd plaintiff being a minor, she is represented by her mother, 3rd plaintiff. 2nd plaintiff has obtained the ownership of plaint schedule property vide sale deed No.515/2018 of Karunagappally Sub Registrar Office. Since the purchase of the property it was in the possession of 2nd plaintiff, her parents and her brother. Plaint schedule property having an extend of 3 cents and it is well demarcated with compound wall on its four sides. 1st and 2nd defendants are the property owners of western and northern side of the plaint schedule property respectively. 1st defendant has a pathway in the western direction for their ingress and egress and he has been using the same and in the sale deed of the 1st defendant the right of pathway has been specifically mentioned. Plaintiffs and 2nd defendants are using the pathway which is starting from the eastern public road extending to western direction

through north-eastern side and running in northern direction for their transportation. From the time of the predecessors of the plaintiffs' itself there was a gate on the north-eastern side of the plaint schedule property facing the pathway and entrance to the plaint schedule property is through that gate. Being so, the 1st defendant demanded to cut open a new pathway through the northwestern side of the plaint schedule property for their access to the above said public pathway. Since the house is situating on three cents, if he permits to cut open a new pathway it will be very adjacent to the kitchen portion of the plaintiffs' house which will create practical difficulty to the plaintiffs. Hence he rejected said demand. Thereafter some of the influential persons in the locality approached the plaintiff and informed that if they will not permit the 1st defendant to cut open the pathway through the plaint schedule property they will close down the gate and in order to prevent ingress and egress of the

plaintiffs' into the plaint schedule property. Further on 21.05.2018, plaintiffs returned after marriage of their relatives, they saw the gate has been closed down and on their inquiry they came to know that 1st and 2nd defendant have locked it. Plaintiff can only enter into the plaint schedule property through that gate. Subsequently he informed the police, and the gate was forcefully opened by them Defendants will again attempt to do the same. Hence he preferred the suit.

3. 2nd defendant filed written statement with counter claim and issues were framed. On the day when the case was listed for trial, counter claim plaintiff absent and not ready for adducing evidence even after giving sufficient opportunities. Hence counter claim is dismissed for default. Therefore, the suit was proceeded against the original defendants exparte.

4. 3rd Plaintiff was examined as PW1 and Exts.A1 to A3 , C1 and C1(a) were marked.

5. Heard the plaintiff and analyzed the evidence on record.

6. In this case, it is to be noted that in order to substantiate the plaintiff averments the 1st plaintiff adduced evidence as PW1. Plaintiff filed this suit seeking permanent prohibitory injunction for restraining the 1st defendant from illegally trespassing into the plaintiff schedule property thereby creating a new pathway through it and from illegally closing the gate installed on the north-eastern corner of the plaintiff schedule property facing the public road to the north, on the northern side of the property.

7. According to the PW1, plaintiffs are in absolute ownership and possession of the plaintiff schedule property and the same was obtained by virtue of sale deed No.515/2018. Plaintiffs have produced Ext.A1 sale deed to

prove that the plaint schedule property is under their ownership and they have also produced Ext.A2 tax receipt to prove their ownership over the plaint schedule property. Ext.A3 is the certified copy of the sale deed No. 2447/2017. However, on perusal of records it is seen that through Ext.A1 & A2 plaintiffs have proved their absolute possession and ownership over the plaint schedule property. There is nothing brought out before this court to discredit the evidentiary value of Exts.A1 & A2 and the same is corroborated by the oral testimony of PW1.

8. Since the plaintiffs are the owner of the plaint schedule property, they have every right to have a peaceful enjoyment of the plaint schedule property. The un-controverted evidence of PW1 shows that her apprehension regarding the trespass and encroachment from the side of the

defendants seems further genuine. Hence I am of the view that plaintiffs are entitled to get a relief of permanent prohibitory injunction as prayed for .

In the result, suit is decreed with costs as follows:-

Defendants are restrained from illegally trespassing into the plaintiff schedule property thereby creating a new pathway through it and from illegally locking or closing down the gate located on the northern boundary of the property facing the public road to the north situated on the north-eastern corner of the property

(Dictated to the Confidential Assistant, transcribed and typed by him, corrected and pronounced by me in open court on this the 31st day of August, 2024)

Sd/-
Aswathy Nair,
Munsiff.

Appendix

Exhibits marked for the side of Plaintiffs:

- A1 2/3/2018 - Sale deed No.515/2018.
- A2 12/3/2018 - Tax receipt of Karunagappally Village.

A3 21/11/2017 - Certified copy of sale deed.

Exhibits marked for the side of Defendants: Nil.

Court Exhibits:

C1 7/6/2018 - Commission report prepared by Adv.Geeshma.

C1(a) 7/6/2018 - Rough sketch prepared by Adv.Greeshma.

Witness examined for the side of Plaintiffs:

PW1 14/8/2024 - Ambili.

Id/-
Munsiff.

// True Copy//

Munsiff.

Typed by : Stelancy.X
Compd.by: