

IN THE COURT OF THE MUNSIFF OF KANNUR**Present: Smt. Vandana R., LL.M., Additional Munsiff.****Tuesday, the 27th day of November, 2018****(6th Agrahayana, 1940)****ORIGINAL SUIT NO. 364 OF 2014.**

- 1 Mundachali Balakrishnan,)
S/o. Parvathi, aged 64 years, Driver,)
residing at Azhikode amsom desom,)
P.O. Azhikode, Kannur-9.) **Plaintiffs.**
- 2 Mundachali Ashokan, S/o. Parvathi,)
“Sreyas”, Pappinisseri, near Pappinisseri)
Panchayath Office.)
Suppl. Plaintiff No. 2 impleaded and)
amended as necessary party as per order in)
IA. 7381/16 & IA.7382/16 dated)
07/03/2017.)

Vs.

- 1 Chaladan Sreemathi,)
W/o. Karunakaran, aged 77 years,)
residing at Chaladan House,) **Defendants.**
P.O. Azhikode, Kannur-9.)
Amended in IA.3213/14 dated 01/09/2014)

2 Satheesan, S/o. Karunakaran,) Defendants.
 aged 60 years, residing at Pallikkal House,)
 P.O. Azhikode.)

This suit is coming on 23rd day of November, 2018 for final hearing before me in the presence of Sri. C.K. Rathnakaran, Advocate for Plaintiffs and of Sri. M.V. Hareendran, Advocate for 2nd defendant reported no instruction and defendants are being called absent, set exparte and having stood over to this day for consideration, the court delivered the following:-

J U D G M E N T

Suit for mandatory and prohibitory injunction.

2. Plaint averments after the amendment in brief is as follows:- Plaint A schedule property and some other properties originally belonged to Thalayan Parvathi and her children by virtue of document bearing No. 818/1944. While Parvathi and her children were in joint possession of the property they partitioned the property as per document No. 1047/1976 of SRO, Valapattanam and property described in item No. 2 in the B schedule of the deed was allotted to the share of suppl. 2nd plaintiff. The said property is shown as plaint A schedule property. Suppl. 2nd plaintiff is under going treatment at Bangalore for parkinson and is laid up there. Hence, plaint A schedule property is being managed by the 1st plaintiff on behalf of suppl. 2nd plaintiff. The defendants are in possession of the property situated on the southern side of plaint A schedule property. While so on 25-7-2014, when the 1st plaintiff visited the plaint A schedule property he found the defendants attempting to make fencing by

encroaching into the plaint A schedule property. But due to the timely intervention of the 1st plaintiff the defendants could not succeed in their attempt. Later when the 1st plaintiff measured the plaint A schedule property it was found that a portion of the house and well of the 2nd defendant was found encroached into the plaint A schedule property. The defendants have no manner of right over the plaint A schedule property. The extent of the plaint A schedule property is 7 ½ cents and suppl. 2nd plaintiff is paying land tax for the same. The house and well of the 2nd defendant was constructed when the 2nd plaintiff was away from the plaint A schedule property. Hence, this suit to restrain the defendants from trespassing into the plaint A schedule property and for a mandatory injunction to direct the 2nd defendant to demolish the unlawful construction made in the plaint B schedule property.

3. Defendant No. 1 did not enter appearance and hence, she was set exparte. Defendant No. 2 entered appearance and filed written statement contesting the suit. But when the matter was listed for trial, the counsel appearing for defendant No. 2 reported no instruction and hence, he was set exparte.

4. Plaintiff No.1 was examined as PW1. Exts.A1, A2, C1 and C2 were marked on the side of the plaintiffs.

5. Heard.

6. Ext.A1 is the certified copy of the partition deed No. 1047/1976. Ext. A1 would go to show that property described in item No. 2 in B schedule was set apart to the share of suppl. 2nd plaintiff namely Mundachali Ashokan . Ext. A2 is the basic tax receipt issued in the name of Mundachali Ashokan. Ext. A2 would go to show that

suppl. 2nd plaintiff is in possession of the plaint A schedule property. Ext. C2 plan would go to show that the defendants have encroached into the plaint B schedule property. By the unchallenged evidence of PW1 coupled documentary evidence, case of the plaintiffs stand proved.

In the result, the suit is decreed as follows.

1. The 2nd defendant is directed to demolish the unlawful construction made in the plaint B schedule property within a period of one month from the date of decree, failing which the plaintiffs shall be entitled to execute the decree through court at the expense of the 2nd defendant.
2. The 2nd defendant is directed to surrender the possession of the plaint B schedule property to the plaintiffs.
3. The 2nd defendant is also restrained by a decree of permanent prohibitory injunction from trespassing into the plaint A schedule property.
4. Plaintiffs are also entitled to costs.
5. Ext. C2 plan shall form part of the decree.

(Dictated to the Confidential Asst., transcribed and typed by her, corrected and pronounced by me in open court, this the 27th day of November, 2018).

ADDITIONAL MUNSIFF.

Plaintiff's exhibits:-

- A1 : 30/05/1976 : Certified copy of Partition deed No. 1047/1976 of SRO, Valapattanam.
A2 : 25/07/2014 : Basic Tax receipt issued by Azhikode North Village Office.

Court's exhibits:-

- C1 : 23/06/2016 : Supplemental report submitted by Smt. Shikha C., Advocate Commissioner.
C2 : 23/06/2016 : Plan submitted by Smt. Shikha C., Advocate Commissioner.

Plaintiff's witness:-

- PW1 : Balakrishnan M.

Defendants' exhibits & witness:-

Nil.

ADDITIONAL MUNSIFF.

mmh/-

**Fair/Copy of
Judgment
in OS. No.364/14
Dated.27/11/2018.**

