

IN THE COURT OF THE MUNSIF PALA

Present. Sri. M.I. Johnson, B.A, L.L.M, Munsiff, Pala

Monday, 30th day of September 2019

08th day of Aswina 1941

O.S.No.214/2011

And

Counterclaim

In

O.S.No.214/2011

O.S.No. 214/2011

Plaintiff:

Sarasamma, W/o Rajan, aged 57 years, Karokkal (H),
Ramapuram Bazar P.O, Vellilappally Kara, Vellilappally Village,
Meenachil Taluk

By Adv: V.G. Venugopal

Defendants:

1. Kamalasan, S/o Gopalan, aged 50 years, Karokkal (H),
Vellilappally Kara, Vellilappally Village, Meenachil Taluk
2. Omana, W/o Kamalasan, aged 45 years, Karokkal (H),
Vellilappally Kara, Vellilappally Village, Meenachil Taluk

By Adv. George Joseph Kakanattu

Counterclaim In O.S.No. 214/2011

Counterclaim Plaintiff/ Defendants:-

1. Kamalasan, S/o Gopalan, aged 50 years, Karokkal (H), Vellilappally Kara, Vellilappally Village, Meenachil Taluk
2. Omana, W/o Kamalasan, aged 45 years, Karokkal (H), Vellilappally Kara, Vellilappally Village, Meenachil Taluk

By Adv. George Joseph Kakanattu

Counterclaim Defendant/ Plaintiff:-

Sarasamma, W/o Rajan, aged 57 years, Karokkal (H),
Ramapuram Bazar P.O, Vellilappally Kara, Vellilappally Village,
Meenachil Taluk

By Adv: V.G. Venugopal

This suit and counterclaim are coming up for hearing on 24.09.2019 and the court on 30.09.2019 delivered the following.

JUDGMENT

Suit is for fixation of boundary and for permanent prohibitory injunction.

2. Plaintiff averments in brief are stated as follows:- Plaintiff schedule item No 1 property is belonged to plaintiff and she obtained that property from her mother through document No 1092/2011 of Ramapuram S.R.O. Plaintiff schedule item No 2 property is belonged to 2nd defendant and 2nd defendant obtained that property from mother of plaintiff through document No 817/1992. Plaintiff schedule item No

2 property is situated on northern side of plaintiff schedule item No 1 property. Earlier there was physical boundary separating plaintiff schedule item No 1 and 2 properties. In the immediate past defendants destroyed aforesaid boundary by using a J.C.B machine and leveled their property. At present there is no physical boundary separating plaintiff schedule item No 1 and 2 properties. Defendants are not allowing to fix the boundary of plaintiff schedule item No 1 property separating the same from plaintiff schedule item No 2 property. Plaintiff got an information that, defendants are making preparations to construct boundary to plaintiff schedule item No 2 property after encroaching in to plaintiff schedule item No 1 property. They have no right to do so. There is a panchayath road through the eastern side of plaintiff schedule properties. Plaintiff schedule item No 1 property has a road frontage of 10 ft width with aforesaid Panchayath road. Intention of defendants is to shift the southern boundary of plaintiff schedule item No 2 property towards south and to abandon road frontage of plaintiff schedule item No 1 property. Defendants are not in good terms with the plaintiff. Hence, boundary separating plaintiff schedule item No 1 and 2 properties is to be fixed by the Court. Defendants are to be restrained by a permanent prohibitory injunction from constructing a boundary after encroaching into plaintiff schedule item No 1 property, from trespassing into plaintiff schedule item No 1 property and from committing any waste therein. For the said reliefs, plaintiff filed the suit.

3. Defendants filed written statement with counterclaim with contentions briefly stated as follows:- There is no Panchayath road abutting to property of plaintiff. Property of 2nd defendant is shown as counterclaim schedule item No 1 property. Property of plaintiff is

situated on western side of counterclaim schedule item No 1 property. 2nd defendant obtained counterclaim schedule item No 1 property from her mother in-law through document No 817/1992 of Ramapuram S.R.O and that property is lying in old Sy No 762/2B with an extent of 25 cents. There is only a 3 ft wide way on the southern side of counter claim schedule item No 1 property belonged to predecessor of plaintiff. Hence, at the time of execution of document No 1092/2011, predecessor of plaintiff namely Janaki had no property with road frontage of 10 ft with the Panchayath road on eastern side. Hence, Janaki had no right to create document No 1092/2011 with a property having road frontage of 10 ft. There is no property belonged plaintiff situated on southern side of counter claim schedule item No 1 property. Description of plaint schedule item No 1 property is incorrect. The property obtained by plaintiff through document No 1092/2011 is situated on western side of 25 cents of land obtained by 2nd defendant through document No 817/1992. Aforesaid property is lying on a higher level from counter claim schedule item No 1 property with a height difference of 3 ft. There was no physical boundary with granite rubles in between both these properties as alleged by plaintiff. When defendants prepared to construct boundary wall separating both these properties and leveled their property, plaintiff filed this suit with an intention to create a road to her property. There is a mud wall on the western side of counter claim schedule item No 1 property separating the same from property of plaintiff and hence, there is no necessity to fix the boundary. 10 cents of land situated on western side of counter claim schedule item No 1 property and northern side of property of plaintiff was belonged to one Anilkumar and he by influencing resurvey

authorities, prepared false resurvey plan with a way to his property. Thereafter, he filed O.S 12/2008 before this court. Thereafter, 2nd defendant made a complaint before resurvey authorities against the manipulation in the resurvey plans. Therefore Anilkumar withdrew O.S 12/2008. Thereafter, from Anilkumar one Krishnankutty Achari purchased aforesaid property and after satisfying with its eastern boundary, he constructed boundary stone foundation in the eastern side of his property. Thereafter, 2nd defendant and Krishnankutty Achary jointly executed an agreement on 11.6.2011 with respect to the boundary. Janaki executed document 1092/2011 after including 1.721 cents of land which is part of counter claim schedule item No 1 property with a length of 75 ft and a width of 10 ft. Aforesaid property is shown as counterclaim schedule item No 2 property. Plaintiff has no right over counterclaim schedule item No 2 property on the basis of document No 1092/2011. In the said circumstances, title of 2nd defendant over counterclaim schedule item No 2 property is to be declared and that, document No 1092/2011 is not binding on 2nd defendant and counterclaim schedule item No 2 property. Plaintiff is to be restrained by a permanent prohibitory injunction from trespassing into counterclaim schedule item No 2 property, from using the same as a way and from bringing vehicles through the same. For the said reliefs defendants filed counterclaim. The suit is liable to be dismissed and counterclaim is to be allowed.

4. Plaintiff filed replication with contentions briefly stated as follows:- Panchayath road is situated on eastern side of property of plaintiff. It is not correct to say that, there was only a 3 ft wide way on the southern side of property of defendants, belonged to Janaki. There was a 10 ft wide portion belonged to Janaki and that property

was purchased by plaintiff through document No 1092/2011. Janaki had every right to sell out that property to plaintiff. It is not correct to say that, no property belonged to plaintiff is situated on southern side of property of defendants. No property belonged to defendants is included in plaint schedule. It is not correct to say that, property of plaintiff is situated on western side property of defendants. There was a granite stone foundation separating plaint schedule item No 1 and 2 properties and the same was destroyed by defendants. At present, there is no boundary separating both these properties. It is not correct to say that, plaint schedule item No.1 property is lying on a higher level from counterclaim schedule item No 1 property with a height difference of 3 ft. Defendants removed soil after encroaching into property of plaintiff also. Plaintiff obtained 2.24 ares of land with excess land through document No 1092/2011. Plaintiff has every right to bring vehicles through plaint schedule item No 1 property. Defendants are not entitled to get a decree for injunction against the same. Plaintiff has no information about the suit in between Anilkumar and 2nd defendant. Defendants are not entitled to get any of the reliefs sought for in the counterclaim. The counterclaim is liable to be dismissed.

5. Upon the pleadings following issues were raised for consideration:-

- 1) Whether the plaintiff is entitled to fix the boundary between plaint schedule properties as sought for? If so, through which line?
- 2) Whether the plaintiff is entitled to put up boundary through lines so fixed?

- 3) Whether plaintiff is entitled to get a decree for permanent prohibitory injunction as sought for?
- 4) Whether the counterclaim plaintiffs/defendants have any title or possession over counterclaim schedule item No 2 property?
- 5) Whether counterclaim plaintiffs/defendants are entitled to get a decree for permanent prohibitory injunction as sought for?
- 6) Whether the counterclaim plaintiffs/defendants are entitled to get a declaration that sale deed No 1092/2011 of Ramapuram S.R.O is not binding on them?
- 7) Reliefs and costs?

6. Plaintiff's evidence in this case is comprised of oral testimonies of Pw1 to Pw3 and documents marked as Exts. A1 to A3. Defendants evidence is comprised of oral testimony of Dw1 and documents marked as Exts. B1 to B13. Commission reports, rough sketch and plans were marked as Exts. C1 to C3(a).

7. I heard the counsel for both sides.

8. Issue No.1:- Plaintiff was examined as Pw1. She filed proof affidavit in terms of the plaint. Case of the plaintiff is that, plaint schedule item No 1 property is belonged to plaintiff and she obtained that property from her mother namely Janaki through document No 1092/2011 of Ramapuram S.R.O. Further case of plaintiff is that, plaint schedule item No 2 property is belonged to 2nd defendant who is sister in-law of plaintiff and she obtained that property from Janaki through document No 817/1992. Plaintiff has further case that, plaint schedule item No 2 property is situated on northern side of plaint schedule item No 1 property and earlier there was a granite

stone foundation separating both these properties. It is alleged by plaintiff that, in the immediate past, defendants destroyed aforesaid granite stone foundation and at present there is no boundary separating plaintiff schedule item No 1 property from plaintiff schedule item No 2 property. According to plaintiff, there is a Panchayath road on eastern side of plaintiff schedule item No 1 and 2 properties and plaintiff schedule item No 1 property has a road frontage of 10 ft. With the said allegations, plaintiff has prayed for fixation of boundary separating plaintiff schedule item No 1 and 2 properties.

9. Plaintiff has produced certified copy of document No 1092/2011 and the same was marked as Ext. A1. Ext. A2 is basic tax receipt issued in the name of plaintiff with respect to the property covered by Ext. A1. Ext. A3 is copy of resurvey plan of ReSy NO 12 of Vellilappally village,

10. On the other hand, defendants have contended that, 2nd defendant obtained 25 cents of land from Janaki through document No 817/1992 lying in old Sy No 762/2B and Janaki had no property on the southern side of that property with a width of 10 ft up to the Panchayath road on east so as to sell out the same through Ext. A1. According to defendants, property of plaintiff covered by Ext. A1 is situated on western side of aforesaid 25 cents of land belonged to 2nd defendant where 2nd defendant has shown her. 25 cents of land as counterclaim schedule item No 1 property in the counterclaim. They have further contended that, aforesaid property of plaintiff on western side of counterclaim schedule item No 1 property is lying on a higher level with a height difference of 3 ft from counterclaim schedule item No 1 property and there is no necessity to fix the boundary separating both these properties. Further contention of defendants is

that, since, Janaki had no property with 10 ft width on the southern side of counterclaim schedule item No 1 property, plaintiff is not entitled to claim right over plaintiff schedule item No 1 property with 10 ft width on the southern side of counterclaim schedule item No 1 property on the strength of Ext. A1. According to defendants, the 10 ft wide portion shown in plaintiff schedule item No 1 property on the southern side of counterclaim schedule item No 1 property is part of counterclaim schedule item No 1 property and the same is shown as counterclaim schedule item No 2 property. According to defendants, plaintiff has no right at all over counterclaim schedule item No 2 property and Ext. A1 is not binding on defendants and counterclaim schedule item No 2 property.

11. From the contention of defendants, it can be seen that, they have the contention that, plaintiff has no property on the southern side of their property which is shown by defendants as counter claim schedule item No 1 property where plaintiff is claiming property on southern side of counterclaim schedule item No 1 property, which is shown as plaintiff schedule item No 1 property. According to defendants, property covered by Ext. A1 is situated on western side of counterclaim schedule item No 1 property. Significantly, defendants have produced certified copy of document No 817/1992 through which 2nd defendant obtained counterclaim schedule item No 1 property and the same was marked as Ext. B2. From the same, it can be seen that, Janaki had retained some property on the southern side of the property covered by Ext. B2. There is nothing in Ext. B2 to show the width of the property retained by Janaki on the southern side of the property covered by Ext. B2. Plaintiff has the allegation that, property retained by Janaki on the southern side of

counterclaim schedule item No.1 property which is plaint schedule item No 2 property, has a width of 10 ft up to the Panchayath road on east, where defendants have the contention that, there was only a 3 ft wide way on the southern side of their property. In considering aforesaid facts, it is very much clear that, there is dispute with respect to southern boundary of plaint schedule item No 2 property and the property situated on southern side of that property which was obtained by plaintiff through Ext. A1 document. In considering Ext. A1 and B2, it can be seen that, plaintiff has obtained some property on the southern side of plaint schedule item no 2 property covered by Ext. B2. In the said circumstances, fixation of boundary separating both these properties is absolutely necessary.

12. Defendants have produced certified copy of document No 1469/1960 and the same was marked as Ext. B4. Through Ext. B4, Janaki obtained entire properties lying in old survey NO 762/2A as well as 762/2B. As per Ext. B4 document, total extent of property lying in old SY 762/2A has 2.13 acres and 762/2B is 2.13 acres. Accordingly, through Ext. B4, Janaki obtained altogether 2.26 acres of land lying in old Sy NO 762/2A and 762/2B. Defendants have produced certified copies of documents Nos 1891/1984, 77/1989, 138/2005 and 2185/2006 and the same were marked as Exts. B5 to B8 respectively. From Exts. B5 to B8, it can be seen that, Janaki had sold out properties form aforesaid 2.26 acres of land. From Ext. B2, it can be seen that, 2nd defendant obtained 25 cents of land lying in old Sy 762/2B. At the time of execution of Ext. B2 document, resurvey was not conducted. In the said circumstance, so as to locate property covered by Ext. B2 document which is shown as plaint schedule item No 2 property and counterclaim schedule item No 1

property, measuring the properties as per old survey is absolutely necessary. For the same, initially entire properties lying in 762/2A and 762/2B, originally belonged to Janaki is to be located. Thereafter, the properties sold out by Janaki is to be located in chronological order. Accordingly, plaint schedule item No 2 property is to be located. Only on locating plaint schedule item No 2 property as per old survey and as per the documents executed by Janaki in chronological order, property on southern side of plaint schedule item No 2 property can be located. Form Ext. A1, it can be seen that, aforesaid property retained by Janaki was sold out to plaintiff. Hence, so as to locate plaint schedule item No 1 property and its boundary separating plaint schedule item No 2 property, the properties are to be measured as per old survey.

13. Significantly, the commissioner and surveyor, appointed from this court to measure out, locate and identify plaint schedule properties, initially prepared the commission report and survey plan which were marked as Ext. C1 and C1 (a). It is significant to note that, Ext. C1(a) plan is prepared as per resurvey. Plaintiff is relying on Ext. C1(a) plan for fixation of boundary separating plaint schedule item No 1 property from plaint schedule item NO 2 property. Since, Ext. C1(a) plan is prepared as per resurvey only, the same cannot be relied on for fixing the boundary separating plaint schedule item No 1 property from plaint schedule item No 2 property. Significantly, Ext. C1 commission report and C1(a) plan were remitted back by my learned predecessor. Thereafter measurement of the properties, commissioner filed Ext. C3 commission report and Ext. C3(a) plan. Defendants relied on Ext. C3(a) plan for identification of counterclaim schedule item No 1 and 2 properties as well as property of plaintiff.

Significantly, Ext. C3(a) plan also is prepared as per resurvey. There was a direction from this court to measure out the properties as per old survey and as per that direction, measurement for Ext. C3(a) was conducted. Significantly, the surveyor was examined as Pw3. In his examination in-chief, he has categorically deposed that, he has not measured the properties as per old survey. It is further deposed by Pw3 that, for want of sub division sketch of old survey plan, he could not measure the properties as per old survey. At the time of cross-examination, defendants have contended that, sub division plan of old survey 762/2A and 762/2B is not available. The said contention of defendants was denied by the surveyor. In considering the testimony of Pw3, it can be seen that, due to the failure on the part of the parties to produce sub division sketch of old survey 762/2A and 762/2B, surveyor could not measure the properties as per old survey. Since, the properties were not measured as per old survey, Ext. C3(a) plan cannot be relied on for fixing the boundary of plaintiff schedule item No 1 and 2 properties.

14. Since, identity of plaintiff schedule item No 1 and 2 properties is in dispute, plaintiff is not entitled to get a decree for fixation of boundary separating plaintiff schedule item No 1 and 2 properties. Significantly, for fixing the boundary separating plaintiff schedule item No 1 and 2 properties, a plan as per old survey is absolutely necessary. Very significantly, such a plan is not prepared in this suit. Hence, the boundary separating plaintiff schedule item No 1 and 2 properties cannot be fixed. This issue is accordingly found against the plaintiff.

15. Issue No 2 and 3:- Both these issues can be considered together for avoiding repetition. Plaintiff has prayed for a permanent

prohibitory injunction restraining the defendants from trespassing into plaintiff schedule item No 1 property, from committing any waste in plaintiff schedule item No 1 property and from creating new boundary separating plaintiff schedule item No 1 and 2 properties as well as conducting any construction in plaintiff schedule item No 1 property. Significantly, plaintiff failed to prove the proper identity of plaintiff schedule item No 1 property by measuring the properties as per old survey and hence, it is only to be held that, plaintiff schedule item No 1 property is not identifiable. In the said circumstances, aforesaid prayer for injunction of plaintiff is not allowable. Since, boundary separating plaintiff schedule item No 1 and 2 properties cannot be fixed, plaintiff is not entitled to get a decree for restraining the defendant from obstructing her in constructing a boundary wall or fencing through the boundary so fixed by the Court. Both these issues are accordingly found against the plaintiff.

16. Issues 4 and 6:- Defendants have the contention that, a portion of counterclaim schedule item No 1 property on its southern side with a width of 10 ft and length of 75 ft is shown as plaintiff schedule item No 1 property by the plaintiff. They have further contended that, aforesaid property is included in Ext. A1 document. It is further contended by defendants that, plaintiff has no right at all over aforesaid property and defendants have shown aforesaid property as counterclaim schedule item No 2 property. Defendants have claimed title and possession over counterclaim schedule item No 2 property. Significantly, defendants failed to prove the identity of counterclaim schedule item No 2 property by measuring the properties as per old survey. Defendants could not locate plaintiff schedule item No 2 property by a measured plan. In the said

circumstances, counterclaim schedule item No 2 property cannot be located and identified. Hence, it cannot be said that, defendants have title and possession over counterclaim schedule item No 2 property.

17. In the aforesaid circumstances, defendants are not entitled to get a decree of declaration declaring that, document No 1092/2011 is not binding on defendants and counterclaim schedule item No 2 property as well as declaration that, defendants have title over counterclaim schedule item No 2 property. Both these issues are accordingly found against the defendants holding that, defendants failed to prove their title and possession over counterclaim schedule item No 2 property and hence, they are not entitled to get a declaration as prayed for.

18. Issue No 5:- Defendants have prayed for a permanent prohibitory injunction restraining the plaintiff from trespassing into counterclaim schedule item No. 2 property, from using any portion of counterclaim schedule item No 2 property as a road and from bringing vehicles through the same.

19. Significantly, as stated above, defendants failed to identify and locate counterclaim schedule item No 2 property. Without identifying counterclaim schedule item No 2 property, defendants are not entitled to get a decree for permanent prohibitory injunction as prayed for. This issue is accordingly found against the defendants.

20. Issue No 7:- Considering the facts and circumstances of the case, there is no costs in the suit and counterclaim. This issue is found accordingly.

In the result, the suit and counterclaim are dismissed. No costs.

(Dictated to the Confdl, Asst, transcribed and typed by her, corrected by me and pronounced in open court on this the 30st day of September, 2019.)

M.I. JOHNSON
MUNSIFF

APPENDIX:

Exhibits Marked for Plaintiff:-

- A1 - 05.06.2011 Certified copy of sale deed No.1092/2011 of Ramapuram SRO
- A2 - 06.08.2011 Land Tax receipt No.2447705 of Vellilappally Village
- A3 - Plan of the property in field No.12 Block No.24 of Vellilappally Village

Exhibits Marked for Defendant:-

- B1 - Plan of the property in Survey No.162/4 of Ramapuram Village
- B2 - 31.03.1992 Certified copy of sale deed No.817/92 of Ramapuram SRO
- B3 - 12.05.2011 Land tax receipt No.3132879 of Vellilappally Village
- B4 - Certified copy of sale deed No.1169 of Meenachil SRO
- B5 - 10.09.1984 Certified copy of sale deed No.1891/84 of Ramapuram SRO

B6	-	12.01.1989	Certified copy of sale deed No. 77/1989 of Ramapuram SRO
B7	-	05.01.2005	Certified copy of sale deed No.138/2005 of Ramapuram SRO
B8	-	11.12.2006	Certified copy of settlement deed No.2185/06 of Ramapuram SRO
B9	-	06.02.2008	Certified copy of settlement deed No.258/2008 of Ramapuram SRO
B10	-	15.06.2011	Certified copy of sale deed No.1092/11 of Ramapuram SRO
B11	-	31.05.2011	Certified copy of sale deed No.987/2011 of Ramapuram SRO
B12	-	11.06.2011	Agreement between Omana and Krishnankutty Achari
B13	-	25.10.2011	Intimation from District Collector Kottayam LDS-47925/08/E3

Court Exhibits:-

C1	-	06.06.2018	Commission Report of Adv. E.M. Binu
C1(a)	-	05.09.2019	Rough sketch
C2	-	11.10.2011	Commission Report of Adv. Dhanya S. Nair
C2(a)	-		Rough sketch
C3	-	20.05.2019	Commission Report of Adv. Mary Paul
C3(a)	-		Survey plan of Field No.12/12 Block No.24 of Vellilappally Village

Third party Exhibits:- Nil

Witness Examined for Plaintiff:-

Pw1 - 05.09.2019 Sarasamma
Pw2 - 18.09.2019 Adv. Mary Paul
Pw3 - 18.09.2019 K.M. Prakasan

Witness Examined for Defendant:-

Dw1 - 18.09.2019 Omana Kamalasan

**M.I. JOHNSON
MUNSIFF**

JUDGMENT

In

O.S. No.214/ 2011

Dtd. 30-09-2019