

IN THE COURT OF THE MUNSIFF PALA

Present. Smt.Priyanka Paul, Munsiff, Pala

Monday, 14th day of March 2022
23rd day of Phalguna 1943

O.S.No.168/2019

And

Counter Claim in O.S.No.168/2019

OS. No. 168/2019

Plaintiffs:-

1. Lissy Thomas, aged 59 years, W/o Late Thomas Mathew, Melattu House, Amanakara Kara. Pin 686576, Ramapuram Village, Meenachil Taluk.
2. Jenson M. Tom, aged 26 years, S/o Late Thomas Mathew, Melattu House, Amanakara Kara. Pin 686576, Ramapuram Village, Meenachil Taluk.
3. Jeffy M.Tom, aged 26 years, S/o Late Thomas Mathew, Melattu House, Amanakara Kara. Pin 686576, Ramapuram Village, Meenachil Taluk.

By Adv.V.R Rajesh and Adv.Sunny David

Defendants:-

1. Augustine Joseph, aged about 40 years, S/o Joseph, Valummel House, Amanakara Kara, Ramapuram Village, Meenachil Taluk, Pin ; 686576
2. Joseph, aged 75 years, S/o Joseph, Valummel House, Amanakara Kara, Ramapuram Village, Meenachil Taluk, Pin ; 686576
3. Jennifer, aged about 35 years, W/o Augustine, Valummel House, Amanakara Kara, Ramapuram Village, Meenachil Taluk, Pin ; 686576

By Adv. Jose Thomas (Set Exparte)

Counterclaim in OS 168/2019

Counterclaim

Plaintiffs/

Defendants:-

1. Augustine Joseph, aged about 47 years, S/o Joseph, Valummel House, Amanakara Kara, Ramapuram village, Meenachil Taluk
2. Joseph, aged 78 years, S/o Chandy, Valummel House, Amanakara Kara, Ramapuram Village, Meenachil Taluk,
3. Jennifer, aged about 43 years, W/o Augustine, Valummel House, Amanakara Kara, Ramapuram Village, Meenachil Taluk

BY Adv. Jose Thomas

Counterclaim

Defendants/

Plaintiffs:-

1. Lissy Thomas, aged 59 years, W/o Late Thomas Mathew, Melattu House, Amanakara Kara, Ramapuram Village, Meenachil Taluk, Pin 686576
2. Jenson M. Tom, aged 26 years, S/o Late Thomas Mathew, Melattu House, Amanakara Kara, Ramapuram Village, Meenachil Taluk, Pin 686576
3. Jeffy M. Tom, aged 26 years, S/o Late Thomas Mathew, Melattu House, Amanakara Kara, Ramapuram Village, Meenachil Taluk, Pin 686576

By Adv.v.R Rajesh and Adv.Sunny David

This suit and counterclaim have been finally heard on 03.03.2022 and on 14.03.2022 the Court delivered the following

JUDGMENT

The suit is one for declaration and permanent prohibitory injunction.

2. Plaintiffs' case in brief is, as follows:- Plaint schedule item no. 1 property having an extent of 5 ares 87 sq. mtrs was originally belonged to Sri.Thomas Mathew as per sale deed no.833/2000 of Ramapuram SRO and he died intestate with respect to that property. Plaintiffs and Sri.Jackson M. Tom are the legal heirs of aforesaid Sri.Thomas Mathew. Since Sri.Jackson M Tom is at abroad, he is not arrayed as a party in the suit. Plaint schedule item no.1 property is jointly owned and possessed by plaintiffs and aforesaid Sri.Jackson M. Tom. There is a way starting from Ramapuram – Koothattukulam road proceeding towards west in a distance of 95 mtrs, turning and proceeding towards north through the property of defendants and further proceeding towards in east-west direction and reaching in plaint schedule item no.1 property. The road portion through the property of defendants with a length of 100 mtrs and a width of 10 ft is shown as plaint schedule item no.2 road. Plaintiffs and their predecessors are using plaint schedule item no.2 road for the past 35 more years, openly, continuously, without any obstruction and as of right and thereby, plaintiffs have acquired right of way by easement by prescription through aforesaid road. On 13.07.2019, defendants made an attempt to obstruct plaint schedule item no.2 road by unloading granite rubbles. Defendants

have no right to obstruct plaintiffs in using plaint schedule item no.2 road. Therefore, plaintiffs have prayed for declaring their right of way by easement by prescription over plaint schedule item no.2 road and for a permanent prohibitory injunction restraining the defendants from altering the lie and nature of plaint schedule item no.2 road, from committing any acts of waste therein and from obstructing the plaintiffs in using plaint schedule item no.2 road.

3. Defendants filed written statement with counter claim with the following contentions :- A way shown as plaint schedule item no.2 road is not in existence. Defendants purchased their property in the immediate past and due to boundary dispute, plaintiffs are not in good terms with the defendants. Father of 2nd plaintiff purchased plaint schedule item no.1 property in the year, 2000 and he died on 13.07.2019. Plaintiffs and their predecessors were used to reach plaint schedule item no.1 property through a pathway which passes through property of defendants and thereafter through Chavara school ground. School authorities constructed boundary wall to their property and at that time, steps were constructed to the boundary wall of the school and plaintiffs were reaching the school ground through aforesaid steps and would reach the public road on the east. Thereafter, the thondu portion on the southern side of aforesaid boundary wall was widened into a road having a length of 95 mtrs and the same was used by plaintiffs and their neighbor, Vattukunnel Sri. Shaji. As continuation of aforesaid road, there was a pathway having a width of 2 ft through the property of defendants to the property of plaintiffs. Around 2 years back, plaintiffs requested a motorable way to their property through

the property of defendants and for the same, defendants demanded consideration for which plaintiffs were not ready. Accordingly, the road was not constructed. Even though a mediation talk was conducted for a widened road to the property of plaintiffs, it was not fruitful since plaintiffs were not ready for paying consideration. On 05.08.2019 at night, 2nd plaintiff and his men forcibly constructed a road through the property of defendants (counterclaim schedule property) and brought their car through that road to their house. Plaintiffs destroyed around 20 rubber trees of defendants. Plaintiffs have no right to forcibly construct such a way. Plaintiffs have not obtained any right of way through the way shown as plaintiff schedule item no.2 road. Accordingly, plaintiffs trespassed upon counterclaim schedule property, forcefully constructed a road and committed acts of waste therein. By suppressing all these facts, they filed the above suit and injunction application by raising false allegations. The same is not allowable. Plaintiffs are not entitled to get any of the reliefs sought for against the defendants. Plaintiffs do not have a prescriptive easement right over plaintiff schedule item no.2. There is no cause of action for the suit. It is necessary to restore and close down the boundaries of counterclaim schedule property for the peaceful enjoyment of counterclaim schedule property by the defendants. Therefore, defendants would pray for a mandatory injunction directing the plaintiffs to restore the boundary of counterclaim schedule property. On failure, defendants would be put to irreparable loss and injury. Defendants are entitled to get compensatory costs from the plaintiffs. Hence, the suit is to be dismissed with costs and counterclaim is to be allowed.

4. Plaintiff filed written statement to counterclaim with the following contentions :- The father of second plaintiff purchased plaint schedule property in the year 2000. The statement that plaintiffs and their predecessors were used to reach plaint schedule property through a pathway through counterclaim schedule property and through Chavara school ground, is false and hence denied. It is not correct to say that school authorities constructed boundary wall to their property and at that time, steps were constructed to the boundary wall of the school and plaintiffs were reaching the school ground through aforesaid steps and thereafter reaching in the public road on east and that later on, the thondu portion on the southern side of aforesaid boundary wall was converted into a widened road with a length of 95 mtrs and the same was used by plaintiffs and their neighbor, Vattukunnel Sri. Shaji. Plaintiffs purchased car in February 2019 and since then, the car has been parked in the courtyard of the plaintiffs. The statement that on 05.08.2019 night, second plaintiff and his men forcefully cut opened a way through counterclaim schedule property and plaintiffs' car was driven through that way to their property, is false and hence denied. In the title deeds of counterclaim plaintiffs, boundaries of counterclaim property are deliberately referred with false intention. Plaintiffs understood that the way was constructed through counterclaim schedule property before 35 years at April – May, 1985. Plaintiffs purchased the property before 19 years. Plaintiffs and their predecessors have been using the said way for the past 35 years, without any obstruction, continuously and uninterruptedly. Apart from this, they have been using the same as an easement by prescription. On enquiry, plaintiffs came to know that for

conducting paddy field cultivation on the adjacent property of defendants, tractor and triller were brought through the said way. After the paddy cultivation, defendants constructed boundary kayyalas and thus obstructed the vehicular traffic to the paddy field. Nevertheless, the said way is still in existence with clear boundaries as a motorable way and the same fact is shown in the commission report also. There is no cause of action for the counterclaim. After the death of first plaintiff's husband, defendants are trying to obstruct the disputed way with the intention to earn money from the plaintiffs. With the said intention, they filed caveat before the Court to the effect that there is no way in existence. Counterclaim defendants/ plaintiffs are not responsible for the cost of the counterclaim plaintiffs/ defendants. On the other hand, counterclaim defendants/ plaintiffs are entitled to realise costs from counterclaim plaintiffs/ defendants. Therefore, the counterclaim may be dismissed with costs of counterclaim defendants.

5. Upon the pleadings, required issues were framed as follows ;
 - 1) Have the plaintiffs acquired right of way by easement by prescription over plaint schedule item no.2 road, as alleged?
 - 2) Are the plaintiffs entitled to get a decree for declaration, as prayed for?
 - 3) Are the plaintiffs entitled to get a decree for permanent prohibitory injunction, as prayed for?
 - 4) Are the defendants entitled to get a decree for mandatory injunction, as prayed for?
 - 5) Order as to costs.

6. Thereafter, defendants remained absent without any representation by the counsel for more than 4 postings. Notice was also issued to the counsel for defendants and for appearance of defendants. Even then, defendants did not appear or represent themselves through their counsel. On 25.01.2022, the case was posted for appearance of defendants as last chance to 03.02.2022. On 03.02.2022 even though defendants and their counsel were called in open court, they were absent and there was no representation from their counsel. Hence, the counterclaim was dismissed for default and the suit was proceeded exparte.

7. From the side of the plaintiff, PW1 was examined and Exts.A1 to A4 were marked. Commission report and rough sketch were marked as Exts.C1 and C1(a).

8. Heard the learned counsel for plaintiffs.

9. Since counterclaim is dismissed for default, the issues that are to be considered are as follows;

- 1) Have the plaintiffs acquired right of way by easement by prescription over plaintiff schedule item no.2 road, as alleged?

- 2) Are the plaintiffs entitled to get a decree for declaration, as prayed for?
- 3) Are the plaintiffs entitled to get a decree for permanent prohibitory injunction, as prayed for?
- 5) Order as to costs.

10. Issue nos.1 to 3 :- Ext.A1 is the sale deed no.833/2000 of Ramapuram SRO. Ext.A2 is the sale deed no.616/95 of Ramapuram SRO. Ext.A3 is the sale deed no.329/92 of Ramapuram SRO. Ext.A4 is the land tax receipt. Exts.A1 to A4 would show that plaintiffs are in absolute ownership and possession of plaint schedule property. Ext.C1 reports that plaint schedule item no.2 road is properly identifiable and that defendants have attempted to dig out earth from the portion of plaint schedule item no.2 road. It is also reported that granite rubbles are seen deposited in the plaint schedule item no.2 road near the defendants' property. This substantiates the cause of action of the plaintiffs regarding an alleged obstruction. Ext.C1 reveals that there is no other way other than plaint schedule item no.2 road to reach the plaintiffs' property. It is further revealed that plaint schedule item no.2 road is of a considerable age and that tread marks of vehicles could be seen through it. PW1 has deposed that plaint schedule item no.2 road has been in existence for more than 35 years and have been used by the plaintiffs.

11. From the un rebutted evidence of PW1 and Exts.A1 to A4 and C1 & C1(a), it is proved that plaintiffs are in absolute possession and enjoyment of plaint schedule item no.1 property Plaintiff has required prescriptive easement over plaint schedule 2 road and that they have a cause of action against the defendants. There is no contra evidence to disprove the case of the plaintiffs. Under these circumstances, the plaint claim is allowed. These issues are answered in favour of the plaintiffs.

12. Issue no.5 :- General rule is that costs shall follow the event. I don't intend to deviate from the said rule. Therefore, I am of the view that the plaintiffs are entitled to realise the costs of the suit from defendants. This issue is answered in favour of the plaintiffs.

In the result,

- 1) Counterclaim is dismissed for default. No costs.
- 2) Suit is decreed as follows ;
 - A) The prescriptive easement right of plaintiffs over plaint schedule item no.2 road is hereby declared.
 - B) Defendants and their men are hereby restrained by a permanent prohibitory injunction from altering the lie and nature of plaint schedule item no.2 road, from committing any acts of waste therein and from obstructing the plaintiffs in using plaint schedule item no.2 road.

- C) Plaintiffs are entitled to recover costs from the defendants.

(Dictated to the Confdl. Asst., transcribed and typed by him, corrected by me and pronounced in open court on this the 14th day of March, 2022.)

Sd/-
PRIYANKA PAUL
MUNSIFF

APPENDIX:

Exhibit marked for plaintiff/Counterclaim Defendants:-

A1	13.04.2000	Sale Deed No. 833/2000 of SRO, Ramapuram
A2	25.02.1995	Sale Deed No. No.616/1995 of Ramapuram SRO
A3	10.02.1992	Sale Deed No. 329/1992 of SRO, Ramapuram
A4	02.03.2022	Land Tax Receipt No. KL05042001109/2022 of Village Office, Meenachil Taluk.

Exhibits marked for Defendants/Counterclam Plaintiffs : Nil

Court Exhibits:

C1	20.08.2019	Commission report filed by Adv. Commissioner , Smt. Anamika.B
C1(a)	20.08.2019	Rough Sketch in Exhibits C1

Third Party Exhibits : Nil

Witness Examined for Plaintiffs:

Pw1 03.03.2022 Lissy Thomas (1st Plaintiff)

Witness Examined for Defendants : Nil

Id/-
MUNSIFF

//True Copy//

PRIYANKA PAUL
MUNSIFF

**Copy of
JUDGMENT
In
O.S. No.168/2019
and
Counterclaim
In
O.S. No. 168/2019
Dtd. 14.03.2022**