

IN THE COURT OF THE MUNSIFF, VAIKOM

Presnt: Smt.Veena.V.S., B.A.,LL.M.,Munsiff.

Wednesday the 12th July 2017

21st Ashadha 1939

O.S.176/2012

Plaintiff:

Ramanan, aged 43 Years, S/o.Chothi,
Padinjarevyppe House, Vadakaramuri,
Velloor Village, Vaikom Taluk.

By Adv. S.N.Jayachandran.

Defendants:

1. Majeed, aged 65 Years, S/o.Ali,
Puthenparambil House, Vadakara Muri,
Velloor Village, Vaikom Taluk.
2. Habeeb, aged 64 Years, S/o.Ali,
residing at 34/415, Sankumugam.P.O.,
Karikkakam Muri, Kadakampally Village,
Thiruvananthapuram District, From Puthenparambil
House, Vadakara Muri,
Velloor Village, Vaikom Taluk.

By Adv. S.K.Mohan.

This suit coming after restoration and having been finally heard on 21.06.2017 and the court on 12.07.2017 delivered the following:

JUDGMENT

Suit for declaration, recovery of possession, fixation of boundary and permanent prohibitory injunction.

2. Plaintiff averments in brief are as follows:- Plaintiff is the owner in possession of plaintiff schedule property by virtue of sale deed vide No.2440/2002. The plaintiff schedule property is well demarcated from the adjacent properties due to the level difference of the property. The property of the second defendant is situated on the eastern side of plaintiff schedule item No.1 property. The 2nd defendant property is in the possession of first defendant. The property of defendant is a paddy field. There was a mud wall in the eastern boundary separating the property of defendant. The first defendant under the instigation of second defendant demolished the said mud wall and destroyed the boundary and grabbed around 5 cents of property from the plaintiff schedule item No.1 property. The said portion is shown in the plaintiff as plaintiff schedule item No.2 property. When the plaintiff demanded to measure out the property and fix the boundary stones. The defendant did not amenable to do so till the

day. Now the defendant forcefully cultivated a banana plants in the plaint schedule item No.2 property. The defendant has no right or title over the plaint schedule item No.2 property. Hence the suit.

3.The defendant filed written statement with the following contentions:- The suit is not maintainable either in law or on facts. The description of the plaint schedule property is not correct. The property of the plaintiff is situated as a pond. So the plaintiff has property up to the eastern boundary of the said pond as per the sale deed vide No.2440/2002. When the plaint schedule property was in the hands of the predecessor of the plaintiff, he excavated soil from the plaint schedule property in 12 feet depth and the property of the plaintiff is situated as a pond suvarnan the predecessor has excavated the soil up to the eastern boundary of the plaint schedule item No.1 property. Thereby the certain portion of the property of the defendant has been fallen into the pond in the plaint schedule property. The paddy field of the defendant has been reclaimed and doing cultivation therein. The plaint schedule item No.2 property is the part of property of the defendant. The plaintiff has no right to claim title over the plaint schedule item No.2 property. When the

predecessor of the plaintiff claimed right over the plaint schedule item No.2 property. The defendant filed a suit as O.S.271/2002 including the plaint schedule item No.2 property for declaring the title of the defendant over the said property and permanent prohibitory injunction. The defendant purchased the property if the knowledge of the fact that the said suit was decreed in favour of the plaintiff (defendant in this case). The decree is still in-force so this suit is barred by principle of resjudicata and estoppel. The decision is binding to the plaintiff also even if found that the defendant has no right over the plaint schedule property. They are entitled to claim title over the same by claiming adverse possession. The plaintiff has no cause of action against the defendant. Hence suit may be dismissed with costs.

4. From the above pleadings the following issues were framed for trial:-

1. Whether the suit is hit by resjudicata?
2. Whether the defendants grabbed plaint item NO.2 property as alleged?
3. Whether the plaintiff right over the plaint schedule property is lost by adverse possession and limitation?

4. Whether the plaintiff is entitled to a decree of declaration as prayed for?
5. Whether the plaintiff is entitled to a decree of fixation of boundary as prayed for?
6. Whether the plaintiff is entitled to get a decree of permanent prohibitory injunction as prayed for?
7. Relief and costs.

5. From the side of the plaintiff, Ext.A1 and A2 documents were marked and PW1 to PW3 were examined. From the side of the defendants Ext.B1 to B7 were marked and DW1 and DW2 were examined. The commission reports and plans were marked as C1,C1(a) and C2,C2(a).

6. Heard both sides. Perused the records.

7. **Issue No.1:-** The suit is for declaration of title of plaintiff over the plaint schedule item No.2 property, for fixation of the eastern boundary of plaint schedule item No.1 property and for permanent prohibitory injunction. According to the plaintiff, the plaintiff is the owner of plaint schedule item No.1 property by virtue of sale deed No.2440/2002. The property of the defendants is situated on the western side. The property of the defendant is a paddy field. The

defendants' property is situated in the lower level than the plaintiff schedule property. There was a mud wall on the eastern boundary of the plaintiff schedule item No.1 property to separate the property of the defendants. But defendants encroached into the certain portion of the plaintiff schedule item No.1 property by demolishing the mud wall. The property having extent of 5 cents encroached by the defendants from the plaintiff schedule item No.1 property which is shown in the plaintiff as plaintiff schedule item No.2 property. The defendants vehemently denied the allegations of the plaintiff in the plaintiff and claimed title over the plaintiff schedule item No.2 property on the strength of Ext.B1 document which is the certified copy of the decree obtained by him in O.S.271/2002 . Further he contended that the title of the plaintiff schedule item No.2 property has already been adjudicated by a competent court. Hence suit is barred by principle of resjudicata. For proving his contention he has produced Ext.B1 to B7 documents. Ext.B1 is the certified copy of the decree in O.S.271/2002. Ext.B2 is his title deed which is a gift deed vide No.160/1986. Ext.B3 is the certified copy of the plaintiff in O.S.271/2002. Ext.B4 is the B diary in O.S.271/2002. Ext.B5 is the tax receipt. Ext.B6 is the possession certificate. Ext.B7 is the

commission report and plan obtained by the defendant in O.S.271/2002.

8. On going through the documentary evidence adduced by the defendants, it made clear that O.S.271/2002 is the suit for declaration of title as well as for permanent prohibitory injunction against Suvarnan from whom the plaintiff purchased plaint schedule property. During the pendency of the suit, Suvarnan executed A1 sale deed in favour of the plaintiff. The suit was decreed exparte. On going through the decree schedule property, it can be seen that the title of the plaintiff in O.S. 271/2002 who is the defendant in this case is declared over the property having extent of 61 cents in Sy. No. 692/2A.

9. The first and foremost contention raised by the plaintiff with respect to the applicability of resjudicata is that the decree schedule property in O.S.271/2002 is not at all identifiable since no plan is attached with the decree. Even though in Ext.C2 and C2(a) report and plan, the defendants obtained a measurement of decree schedule property on the strength of Ext.B1 document. The measurement was not proper hence the part of the measurement done by the

commissioner with respect to the decree schedule property of the defendant is not at all admissible in evidence.

10. Perusing the pleadings of both parties and evidence adduced, it can be seen that the measurement done by the commissioner with respect to the decree schedule property as mentioned in Ext.B1 document is set aside as per order in I.A.944/2016. However it is an admitted fact that the property of the plaintiff is situated on the western side of the property of the defendants. The boundary of the property of plaintiff and defendants is disputed in this case. According to the defendants, the plaintiff has the property only up to the eastern end of the pond situated on the plaint schedule item No.1 property. But the plaintiff alleged that plaint schedule item No.1 property is further extended towards east and plaint schedule item No.2 property is part and parcel of plaint schedule item No.1 property. But according to the defendants, plaint schedule item No.2 property is part and parcel of his property shown in the boundary mentioned Ext.B1 decree. On going through Ext.B1 decree, it can be seen that the property of the defendants is extended up to the pond situated in the plaint schedule property. The decree schedule property described in Ext.B1 document was property having extent of 61 cents comprised

in survey No. 692/2 A. The boundary of the property of the defendants is described in Ext.B1 document as Kaithalathil is on the east (മണ്ണു മാട) mud wall is on the south and north. The pond of the defendant is on the western side. Upon the aforementioned property the court declared title of the defendants. So on the closure scrutiny, it can be seen that the plaint schedule item No.2 property situated on the further east of the pond of the plaintiff in this case is included in the decree schedule property mentioned in Ext.B1 document.

11. Further the commissioner in O.S.271/2002 reported in Ext.B7 report that the decree scheduled properties 9 the property of defendants in this case) are demarcated from other properties with the natural boundaries due to the level difference. The commissioner further reported that the defendant has calculated banana plants all the four boundaries of the decree scheduled property. Mean while, in this case the two commission reports and plans were obtained which marked as Ext.C1, C1(a), C2 and C2(a). In the said commission report, the commissioner reported that the plaint schedule item No.2 property is lying contiguously with the property of the defendant without having any demarcation. In Ext.C2, C2(a) commission report and plan, the commissioner reported that plaint schedule item No.2

property will be included in the plaint schedule item No.1 property as per the description of the plaint schedule properties in the plaint and also included in the decree schedule property as per the descriptions in Ext.B1 document.

12. The learned counsel for the plaintiff argued that as per Ext.B2 documents only the measurement of three sides of the property of the defendant is mentioned. So the property could not be identified without assessing the proper shape of the said property. But in Ext.B2 document even though the three sides measurement is mentioned therein, it does not mean that the property of the defendant has only three sides because the boundary of four sides were clearly mentioned in the said document. More over, Ext.B1 document made it clear that the plaint schedule item No.2 property has been found as part and parcel of the defendant's property mentioned in Ext.B1 decree. So the title over the said portion has already been adjudicated in O.S. 271/2002 and declared that the defendant has title over the property having extended up to the pond of the property of Suvarnan. So since the same cause of action has been arisen in this case which cannot be adjudicated again because

I am of view that principle of resjudicata is applicable in this case. Since the plaint schedule property is tranferred during the pendency of O.S.271/2002, the principle of dispendense also applicable and the decree is binding to the plaintiff the transferee pendente lite.

13. Another question to be determined is whether the exparte decree obtained by the defendant in this case who was the plaintiff in O.S. 271/2002 against the predecessor in interest of the plaintiff in this case will operate as resjudicata. The Hon'ble Supreme Court of Kerala and Hon'ble High Court of Kerala of various states settled the legal possession in Pandu Rang Ramachandra v. Shanthibai Ramachandra reported in AIR 1989 SC 2240, Ram Govinda v. Bhaktabala reported in AIR 1971 SC 664 and Krishna Pillai v. Sreedevi Amma reported in 1987 (1) KLT 648 that the exparte decree will operated as resjudicata if the matter has been adjudicated by competent report. On going through Ext.B1 to Ext.B4 documents, it can be seen that even though it was an exparte decree , it has been adjudicated on merits by a civil court after adducing evidence. During the pendency of O.S. 271/2002 Survarnan in O.S. 271/2002 sold out the property to the plaintiff in this case. So he is a transferee pendente lite and the decree is binding on him. Once a

dispute with respect to the property is settled by a decree it must be binding on transferee. There shall not be a second litigation in respect of the same right over the same property. The basic principle u/s 11 of the Code of Civil Procedure and lis pendence is that there must be a finality of every litigation and a matter in dispute once decided by a court of competent jurisdiction is binding not only the same parties in the suit but also parties under which they or any of them claim or litigation under the same title. The said point is elaborately discussed in *Jihas.P. v. Salim and others* reported in 2014(2) KHC 753.

14. The learned counsel for the plaintiff further argued that the cause of action is different in both cases. According to him, the defendants have encroached into the plaintiff schedule item No.1 property and grabbed plaintiff schedule item No.2 property in the month of September, 2011 and planted banana saplings. The plaintiff further alleged the property of the plaintiff is situated on the higher level and the property of the defendant is situated on the lower level and the property of the defendant is a paddy field. Further there is a mud wall on the eastern side of the plaintiff schedule item No.1 property which separates the property of plaintiff, from the property

of defendants the said mud wall was demolished by the defendants and encroached into the plaint schedule item No.2 property. But on going through Ext.C1 (a) commission report and plan obtained in this case, it can be seen that the property of the defendant is a reclaimed land and situated in the higher level than the property of the plaintiff. At this juncture, the possibility of demolishing mud wall and taking soil to level their property from the plaint schedule property is not at all a believable version. Moreover, in Ext.B7 document shows that even at the time of the pendency of O.S.271/2002, the defendant reclaimed their land and was lying in the higher level than the plaint schedule property and the commissioner could see banana cultivation in the four sides of the property of the defendant including plaint schedule item No.2 property. So, it can be seen that the cause of action is incorporated in the plaint for the sake of the plaint.

15. From the above discussion I hold that the title of the plaint schedule item No.2 property has already been adjudicated in O.S.271/2002 and the court found that it is the part and parcel of the property of the defendants in this case. Further, it is found that defendants in this case has property up to the pond in the property of

the plaintiff situated on the western side of the property of the defendants. The decree is still in existence unchallenged so the decree is binding to the plaintiff. So I hold that the suit is barred by principle of resjudicata. Issue No.1 is found against the plaintiff.

16. **Issue No.2:-** The plaintiff alleged that the defendants grabbed portion of plaint schedule item No.1 property. The said portion is scheduled in the plaint as plaint schedule item No.2 property. Admittedly, the plaint schedule property is situated in between the pond situated in the plaint schedule item No.1 property and the property of the defendants. But evidence adduced by the defendants proved that the civil court having competent jurisdiction has already been found that the property up to the pond situated in the plaint schedule item No.1 property belonged to the defendants. So the question of encroachment does not arise at all. Issue No.2 is found against the plaintiff.

17. **Issue No.3:-** The defendants also claimed title over the plaint schedule item No.2 property by adverse possession. But this question need not be considered as it has already been found that the defendant is the owner in possession of the decree schedule property

mentioned in Ext.B1 document which covers plaint schedule item No.2 property also. So issue No.3 is found accordingly.

18. **Issue No.4:-** The plaintiff filed suit for declaration of title over the plaint schedule item No.2 property by alleging that the said portion has been encroached by the defendant from his absolute ownership. But in O.S.271/2002 Civil Court has already been adjudicated the title over the said portion and found that it is part and parcel of the property of the defendants. The decree remains unchallenged till the day the decree is binding to the plaintiff in this case. So he cannot claim title over very same portion upon which the court declared title in favour of the defendants. Issue No.4 is found against the plaintiff.

19. **Issue No.5:-** The plaintiff also prayed for fixing the eastern boundary of plaint schedule item NO.1 property from the property of the defendants. But the plaintiff did not care to schedule the property of the defendants. Nandakumara Varma v. Usha Varma reported in 2015 (2) KLT SN 20 it was held that in order to maintain a suit for fixation of boundary, it is necessary that properties of the parties to the suit are adjoining properties. It is not the boundary of the plaintiff alone is fixed. It is the boundary between the property of

plaintiff and defendants that is fixed. This necessitates description of the properties of both parties in separate schedule in the plaint and the plaintiff making a prayer for fixation of boundaries between the properties. But unfortunately this has not done in this case. So the decision is squarely applicable in this case on the strength of the above legal principle I am of view that the plaintiff is not entitled to get the eastern boundary of plaint schedule item No.1 property is fixed through process of court. Issue No.5 is found against the plaintiff.

20. **Issue No.6:-** Plaintiff also sought for the ancillary relief of permanent prohibitory injunction against the defendants. But it has already been found that the plaintiff is not entitled to get the main relief of declaration of title and fixation of boundary. So he is not entitled to get decree of permanent prohibitory injunction also. Issue No.6 is found against the plaintiff.

21. **Issue No.7:-** Plaintiff has not succeeded to prove the plaint averments, the suit is barred by principle of resjudicata. So he is not entitled to get any reliefs as prayed for. By considering nature of the case I am of view that parties shall bear their costs.

In the result, suit is dismissed. Parties shall bear their costs.

Dictated to the confdl. Asst. transcribed and typed by her corrected by me and pronounced in open court on this the 12th day of July, 2017.

Sd/-
Veena V.S.
Munsiff.

A P P E N D I X

Exhibits marked for the Plaintiff:

- | | | |
|----|------------|---|
| A1 | 06.11.2002 | Certified copy of Sale deed No.2440/2002 of SRO., Thalayolaparambu. |
| A2 | 21.05.2012 | Land tax receipt No.3730539 issued by Village Officer, Velloor. |

Exhibits marked for the Defendants:

- | | | |
|----|------------|---|
| B1 | 18.12.2003 | Certified copy of Decree in O.S.271/2002 of Munsiff Court, Vaikom. |
| B2 | 21.01.1986 | Certified copy of Gift deed No.160/1986 of SRO, Thalayolaparambu. |
| B3 | 04.06.2002 | Certified copy of Complaint in O.S.271/2002 of Munsiff Court, Vaikom. |

B4		Certified copy of B-diary in O.S.271/2002 of Munsiff Court, Vaikom.
B5	08.07.2014	Land tax receipt No.2857581 issued from Velloor Village.
B6	19.12.2011	Possession Certificate issued by Village Officer,Velloor.
B7	18.06.2002	Certified copy of C1 commission report in O.S.271/2002 of Munsiff Court, Vaikom.
B7(a)	18.06.2002	Rough sketch filed along with C1 report in O.S.271/2002 of Munsiff Court,Vaikom.

Third party Exhibits: NIL.

Court Exhibits:

C1	13.08.2012	Commission report field by Adv.Bijosh Jose.
C1(a)	13.08.2012	Rough sketch field along with C1 report.
C2	18.01.2016	Commission report filed by P.M.Sudarsanan.
C2(a)	20.11.2015	Survey plan prepared by Taluk Surveyor filed along with C2 report.

Witness examined for the Plaintiff:

PW1	09.01.2017	Ramanan.
PW2	30.01.2017	Shibu.S.
PW3	22.02.2017	P.M.Sudarsanan.

Witness examined for the Defendant:

DW1	20.03.2017	P.A.Majeed.
DW2	12.06.2017	Beena Gopal.

Court Witness: NIL.

Id/-
Munsiff.

//True Copy//

Typed by:
Compared by:

Veena.V.S.,
Munsiff.

Copy of Judgment
in O.S.176/12
Dated: 12.07.2017

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