

IN THE COURT OF THE MUNSIFF, VAIKOM
Present: Kum. Abhinimol Rajendran, Munsiff.

Saturday the 31st day of August 2024

9th day of Bhadra 1946

OS No. 250/2015

Plaintiffs :-

1. Joseph, aged 58 years, S/o. Francis, Kaniyamparambil (H), Eramalloor.P.O, Eramalloor Kara, Aroor Village, Cherthala Taluk, Now working at AL Ain UAE.
2. Susanna, aged 51 years, W/o. Joseph, Kaniyamparambil (H), Eramalloor.P.O, Eramalloor Kara, Aroor Village, Cherthala Taluk, Now working at AL Ain UAE.

Plaintiff 1 and 2 represented by their Power of Attorney Holder V.George, S/o. Vava, aged 70 years, Ayyampallil (H), House No. 8/188 A, Mattancherry, Kochi -2, Ernakulam District.

By Adv. D.Subhash Chandran.

Defendants :-

1. John Antony Panazhan, aged about 45 years, S/o. Antony, Panezhath (H), Kothavara Kara, Thalayazham .P.O., Thalayazham Village, Vaikom Taluk.
2. Varkey Antony Panezhan, aged about 43 years, S/o. Antony, Panezhath (H) Kothavara Kara, Thalayazham .P.O., Thalayazham Village, Vaikom Taluk.
3. Sabitha Thomson, aged about 49 years, D/o. Antony and W/o. Thomson, Membadikattu (H), Edayazham Kara, Vechoor Village, from Panezhath (H) Kothavara Kara, Thalayazham .P.O., Thalayazham Village, Vaikom Taluk.

4. Ammu Antony, 74 years, W/o. Antony,
Panezhath (H) Kothavara Kara, Thalayazham .P.O.,
Thalayazham Village, Vaikom Taluk.

D1 to D3 and D4 - Exparte

This suit having been finally heard on 12.08.2024 and the Court on 31.08.2024 delivered the following:-

JUDGMENT

1. Suit is for permanent prohibitory injunction and fixation of boundary.
2. Brief averments in the plaint are as follows:- The plaintiff one and two were husband and wife and they were the owner in possession of the plaint schedule property by virtue of gift deed 264/1991 of Vechoor SRO. The property was given to the plaintiffs by the father of the 2nd plaintiff. The plaintiffs where now residing abroad. For conducting the case the 3rd plaintiff who was the power of attorney was appointed and he had filed the suit on behalf of the plaintiffs. The said property was given by the father of the second plaintiff as a marriage gift to the plaintiffs. The remaining properties of the father of the 2nd plaintiff on its eastern and Southern boundaries were demarcated with the signs shown by the father of the 2nd plaintiff and in the

southern side public path way was demarcated with fence and the western side road was demarcated with boundary stones. The property lying on the eastern and northern side of plaint schedule item No.1 property were belonging to the father of the 2nd plaintiff and after his death said property were in the joint ownership of plaintiffs and defendants. The said property was defined as item No.2 property. Though item No.2 property was partible and was in the joint ownership of the plaintiff and defendants it was due to the love and affection of 2nd plaintiff towards 4th defendant who is the mother of 2nd plaintiff she was not interested in dividing the plaint schedule item No.2 property in her life time, therefore she did not sought redress and reserve her right to be claimed later. 1st and 2nd defendant were residing abroad and 4th plaintiff was residing in item No.2 property. Sabitha the 3rd defendant in this case and the sister of the 2nd plaintiff, stays at her matrimonial home and from there she used to look after her mother's affairs who was residing in item No.2 property. Matter being so, 1st defendant came from abroad and expressed his desire to reside in the item No.2 property by making a house there and for that he would like to make a partition of item No.2 property. He

further proposed to acquire item No.1 property in his name so that he himself and 2nd defendant could construct residential house separately. But, 2nd plaintiff suggested that it would cause mental agony to the 4th defendant as a result of which the relationship between the plaintiffs and defendants became strained and 2nd defendant started to make objections to the boundaries accepted from the time of their father and also about the trees standing near by the boundaries. The defendant there after intimidated the plaintiffs by threatening that they would restrain the plaintiff from taking the income from item No.1 property on 23-12-2014. The plaintiff had got reliable information that for the above said acts the 1st defendant got the support of 2nd and 3rd defendant. The 2nd defendant who was working abroad on been informed that an altercation occurred between the 2nd plaintiff and the 1st defendant had contacted the plaintiff over phone and intimated them by telling them that unless the plaintiff did not act as consulted by the defendant he would reach the native place and would execute their plan. Though the 4th defendant had not consented to the alleged activities of the defendants she was implead been the owner of the property and a necessary party to the suit.

3. There after the plaintiff was arrived from abroad and intended to construct a boundary wall in the item No.1 property; and at that time their attempt was obstructed by the 2nd defendant who came from abroad and raised frivolous objection regarding the standing position of the trees in the said property and declared that he would cut the trees by trespassing into the plaint item No.1 property and would construct a boundary wall forcefully on 18.05.2015. The defendants had no right to do so. The plaintiff apprehended that there was every possibility of them executing their threat with help of man power. Hence the suit.
4. Brief averments in the written statement filed by the D1 and 4 were as follows:- The suit was not maintainable either in law or on facts. The averments in the paragraph 1 was false. The relationship between the plaintiffs and defendants were admitted. Plaintiff had to prove the Gift deed No. 264/1991 of Vechoor SRO. The General Power of Attorney deed in the name of 3rd plaintiff was also to be proved. General Power of Attorney deed was not duly and lawfully prepared and therefore the 3rd plaintiff had no power or standing in law to file the suit on behalf of the 1st and 2nd plaintiffs. The fact that the plaint schedule item No.1 property was in the

possession of the plaintiffs were not true. The plaintiffs had no accurate knowledge of the property. Antony who was the father of the plaintiffs and the defendants had not measured out the property. It was evident from the plaint itself. The description of the plaint schedule item No.1 property was also not correct. The plaintiffs had taken the possession of the property as shown by the father. From that it was clear that the father Antony had not measure out the property to the plaintiffs. As such they were not entitled for an injunction against the defendants in respect of the property. Father of the plaintiffs and the defendants owned property including plaint schedule properties vide settlement deed No.3592/63 of Vaikom SRO. The 2nd plaintiff grand-father had alienated properties to the plaintiffs and the defendants father, whereby he had obtained 98 cents of property comprised in survey No.186/6, 51 cents comprised in survey No.186/8, 25 cents comprised in survey No. 186/11, 1Acre 11 cents comprised in survey No. 186/7 A, B, 33 cents comprised in survey No.179/14, 11 cents comprised in survey No.179/15, 3 cents comprised in survey No.180/12/1, 22 cents comprised in survey No. 180/12/2. The description of the property obtained by the father as per title deed

No.3592/63 comprised in survey No. 186/7A, B and item No.1 property did not match. In various parts, the property obtained by Mr. Antony the father of plaintiffs and the defendants were gone for pathways. Especially the property comprised in survey No. 186/7A, B. Property was also gone for pathway from item No.1 property. Not only that the description of item No.1 property of 97 cents were shown to be comprised in survey No. 186/7A and 4 cents were shown to be comprised in survey No.186/7B. It was shown by the plaintiffs for the purpose of misleading the Court. The description of item No.2 property were also not correct. It was described by including that part of the property which was gone for pathway. The fact that there lied property belong to the father on the eastern and southern side of item No.1 property was false. It was specifically stated in the plaint that father had shown the boundaries of plaint schedule item No.1 property to the plaintiffs; from that itself it was clear that the plaintiffs was not sure about the boundaries of item No.1 property. The fact that on the southern and western part of item No.1 property there lied a pathway was also not correct. It was also denied that item no.2 property was partiable and it was in the joint possession

of the plaintiffs and defendants and they were jointly earning income from it. It was not true that the plaintiffs had made several directions to the defendants regarding the partition of the property and regarding the construction of house by the 1st defendant. It was also not correct that the plaintiff had stated that the matter of partition of property could be considered after the life time of the mother of the parties. It was further denied that regarding the partition of item No.2 property parties were in strained relationship.

5. Mr. Antony had not revealed the boundaries of item No.1 and 2 properties. The defendants had not made any objection regarding the boundaries and trees standing beside it as they had no knowledge about it. The fact that on 23.12.2014 the 1st defendant had intimidated the plaintiffs and he had got support from 2nd and 3rd defendants were also not true. It was also denied the reasonable knowledge of the plaintiffs regarding the said facts and the fact of altercation between the parties. It was not true to state that 2nd defendant had contacted 1st and 2nd plaintiffs over phone and had intimidated them by telling that unless the plaintiffs did not act as consulted by the defendant he would reach the native place and would execute their plan. Such an incident

never happened. 1st defendant had not communicate with the 2nd plaintiff in an agitated manner. 1st defendant had no knowledge that the plaintiff had arrived from abroad and had decided to strengthen the item No.1 property by constructing compound wall. It was false to state that 1st defendant and 2nd defendant had restrained the plaintiffs and raised objection regarding the position of standing trees in item No.1 property. It was also not correct to allege that the defendants had threatened the plaintiffs by stating that they would make any construction in the property. Plaintiffs had no right to get an injunction against the defendants in respect of property which was not properly demarcated. Hence, they prayed to dismiss the suit.

6. The defendants 1 and 4 had made additional written statement contenting as follows:- The amendment carried out in the plaint was false and he was against the facts lay down in itself. The plaintiffs earlier case was that they were in position of the plaint schedule property as shown by their father and for that they want to fix its boundaries on the basis of the surveyor records. Later the amendments carried out appears to have the effect of altering the relief by fixing the boundaries on the base of possession. For that reason

itself the plaint was not maintainable. The report and plan relied on by the plaintiffs for carrying out the amendment was not correct. That doesn't show the correct lie and nature of the item No.1 and 2 properties. Part of the property that was given for pathway was not clearly identified by the Commissioner. It was irrevocably lost and as such there is nothing wrong in relocating the property after removing it. It is only insincerity to state in the report that item No.1 property includes property laying on the southern side of pathway. It was not permissible to fix the boundaries of the properties on the basis of possession itself. In fact the item No.1 property was not in the possession of the plaintiffs. The suit was filed under the pretext of obtaining the said property.

7. From the rival contentions following issues were settled for trial:-

1. Are not the plaintiffs entitled to a decree for fixing the boundary between the plaint schedule item No.1 and 2 property? If so, what exactly is the boundary between the two properties?
2. Are not the plaintiffs entitled to the perceptual injunction prayed for?
3. What is the order on reliefs and costs?

8. From the side of plaintiffs, PW1 was examined and Ext.A1 to A4 documents were marked. The commission report and rough sketch were marked as Ext. C1 and C1(a). No documentary evidence was adduced from the side of the defendants and no cross were recorded. The defendants 2 and 3 remains absent and they were already set exparte in the suit.

9. Heard the learned counsel for plaintiffs.

10.I have meticulously gone through the evidence adduced from the side of plaintiffs. The power of attorney holder gave evidence as PW1. He filed proof affidavit in tune with the pleadings in the plaint. In order to prove the case, plaintiffs would also rely on Ext. A1 to A4 documents. Ext. C1 commission report and Ext. C1 (a) rough sketch. After the case was listed for evidence no instruction from the side of defendants was submitted by the counsel for the defendants. Hence they were set exparte and no cross was recorded. From the unchallenged evidence, it can be seen that plaintiffs are entitled to get a decree as prayed for.

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

1. The plaintiffs are entitled for a decree for fixing the eastern and southern boundaries of item No.1 property

demarcating item No.2 property as per survey records and title deeds.

2.After the fixation of boundary the defendants 1 to 3 and their men are restrained from forcefully making any encroachment up on the plaint schedule item No.1 property, obstructing the plaintiffs and their men from constructing any wall or fence therein and are further restrained from cutting any trees therein and doing any act detrimentally affecting the rights of the plaintiffs therein.

Dictated to the confdl. asst. transcribed and typed by her corrected by me and pronounced in open court on this the 31st day of August, 2024.

**Sd/-
Abhinimol Rajendran,
Munsiff.**

APPENDIX

Exhibits marked for the Plaintiff:-

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|----|---|---|
| A1 | : | 05.03.1991 Gift deed No. 264/1991 of Thalayazham (Vechoor) SRO |
| A2 | : | 05.02.2014 Lax Tax receipt No. 3085864 issued from Thalayazham Village Office |
| A3 | : | 11.07.1963 Certified copy of settlement deed No. 3592/1963 of Vaikom SRO. |
| A4 | : | 27.05.2015 Power of Attorney |

Exhibits marked for the Defendant:- NIL

Court Exhibits

C1	: 04.09.2015	Commission Report filed by Adv. M.S.Jaya Gopal
C1(a)	: 04.09.2015	Rough Sketch prepared by Adv. Commissioner is attached along with commission report.

Witness examined for the Plaintiff:-

PW1	06.07.2024	V.George
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Witness examined for the Defendant:- NIL

Id/-
Munsiff

// True Copy //

Copied by :-

Comp. by:-

Sd/-

**Abhinimol Rajendran,
Munsiff.,**

**Copy of
JUDGMENT**

IN

O.S.250/2015

DATED:31.08.2024