

THE COURT OF MUNSIFF - MAGISTRATE, PERINTHALMANNA

Present: Smt.Ancy.T, LL.B., Munsiff-Magistrate.

Monday, the 18th day of December, 2017

the 27th day of Agrahayana, 1939.

ORIGINAL SUIT No.33/2008

Between:-

Koyanni, 43 years, S/o. Moidukurikkal,
Pattukuth Veedu, Kunnakkavu(P.O.),
Elamkulam amsom, Perinthalmanna Taluk,
Malappuram District.

Plaintiff

And:-

1. Veerankutty, 38 years, S/o.Chekku,
Kollaruthodi Veedu, Aliparamba amsom,
Paral desom, Perinthalmanna Taluk.
2. Mustafa, 35 years, S/o.Kunhahamed,
Chemmankuzhi House, Aliparamba amsom,
Vazhenkada desom, Perinthalmanna Taluk,
Malappuram District.
3. Pokker Haji, 60 years, S/o.Mammi Haji.
Chemmankuzhi House, Aliparamba amsom,
Vazhenkada desom, Perinthalmanna Taluk,
Malappuram District.

Defendants

* Supplement:

4. Muhammed, S/o.Kollaruthodiyil Moidu,
 5. Kunhimammed, 54 years,
S/o.Kollaruthodiyil Moideen,
 6. Khadeeja, D/o.Kollaruthodiyil Moideen,
 7. Muhammedali, S/o.Chemamthodiyil Abu,
- Defendants 4 to 7 are residing at Paral amsom desom,
Perinthalmanna Taluk.

* Impleaded as per Order in I.A.624/10, dated 13.07.2010.
Amended as per Order in I.A.625/10, dated 13.07.2010.

This suit coming on the 12th day of December, 2017 final hearing before me in the presence of Sri.K.K.Suresh Lal, Advocate for the plaintiff and Sri.C.H.Ashique, Advocate for the defendants 1, 2, 3 and defendants 4,5,6 and 7 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 recovery of possession on the strength of title.

2. The averments in the plaint are as follows. The plaint schedule property was originally belonging to the Edumbalakkatt Achan by way of jenm right and from him the property was purchased by Kunhenu Haji and later he had sold out the plaint schedule property to his wife Ayishakutty Umma by virtue of kanom sale deed No.2156/1964 of SRO Cherpulassery and by virtue of that she was in exclusive possession and enjoyment of the property. She has paid tax in respect of the plaint schedule property. Later Ayishakutty Umma died intestate. The plaintiff is the sole legal heir of Ayishakutty Umma. Hence, the property in the possession and enjoyment of Ayishakutty Umma devolved upon her brother's son who is the plaintiff herein. After that even though the plaintiff approached the village office for remitting tax for the plaint schedule property they demanded legal heirship certificate from the plaintiff. The plaintiff was working at abroad. On 11.02.2008 when the plaintiff reached his native place and visited the plaint schedule property it was found that the defendants trespassed in to the plaint schedule property and committed acts of waste in the plaint schedule property. The plaintiff requested the defendant to vacate the premises, but the defendants were not amenable for that. The plaintiff is

claiming mesne profits at the rate of Rs.4000 per year. Hence, the suit is filed for recovery of the possession of the property on the strength of title. At the time of filing of suit there were three defendants. After the issuance of the summons the defendants No.1 to 3 appeared before the court and filed written statement. Later the plaint was amended for incorporating the survey number of the plaint schedule property as 114/1 and for impleading defendants No.4 to 7. Even though the defendant No.4 appeared before the court he failed to file written statement within the stipulated time and hence the petition to receive the written statement was dismissed. After that the defendant No.4 filed written statement. The defendant No.5 to 7 did not appear before the court and they were called absent and set exparte. Subsequently the defendant No.7 filed IA.1087/17 and IA.1086/17 to set aside the exparte decree and to condone the delay of 2519 days on 19.10.2010 and that was allowed. After that the defendant No.7 filed written statement.

3. On the listed day, there was no representation for the defendants No.1 to 3. The defendants No.5 and 6 are already exparte in the suit itself. The counsel for the defendants No.4 and 7 reported no instructions and hence they were called absent set exparte.

4. To prove the case of the plaintiff, the plaintiff was examined as PW1 and Exts.A1 to A6, C1, C1(a), C2, C2(a) were marked. Ext.A1 is the sale deed No.2156/1964 SRO Cherpulassery. Ext.A2 is the death certificate. Ext.A3 is the legal heirship certificate. Ext.A4 is the lawyer notice, postal receipt and acknowledgment card. Ext.A5 is the returned lawyer notice. The Advocate Commissioner inspected the plaint schedule property and filed report and plan and it is marked as Ext.C1,C1(a).The Advocate Commissioner inspected the property for the second time with the assistance of a surveyor and filed report and survey plan and it marked as Ext.C2, C2(a). The plaint schedule property was measured as per the kanom sale deed No.2156/1964 SRO Cherpulassery. As per the above said sale deed the property is lying in sy No.114/2 and the extent of the property is 1 acres and 92 cents paramba. After measurement it was found that the property is lying in Aliparamba village, Paral desom and it is lying in sy No.114/1 and the extent of the property was found to be 1 acres and 57.9 cents. The plaint schedule property is marked as plot A, B, C and D in Ext. C2 (a) plan. The extent of the plot A is 41.7 cents, plot B is 17.8 cents, plot C is 37.8 cents and plot D 60.6 cents. The plot B is lying as a road. The plaintiff claims recovery of possession of the plaint schedule property.

5. The plaintiff's case stands proved through the proof affidavit together with documents. Hence, the plaint claim stands proved and plaintiff is entitled to get the decree as prayed for. The plaintiff is entitled to get decree of recovery of possession of the plaint schedule property from the defendants as prayed for.

6. In the result, the suit is decreed as follows.

- 1) The defendants are directed to surrender vacant possession of the plaint schedule property to the plaintiff with in two months from today.
- 2) Ext.C2(a) plan shall form part of the decree.
- 3) The plaintiff is entitled to realise the costs of the suit.

(Dictated to the Confidential Assistant, transcribed by her, corrected and pronounced by me in open Court, this the 18th day of December, 2017).

Munsiff-Magistrate

Appendix:

Witness Examined for Plaintiff:

PW1 - 05.12.2017 - Koyanni.

Exhibits Marked for the Plaintiff:

A1 - 23.09.1964 - Kanam deed.
A2 - 24.06.1988 - Death Certificate.
A3 - 27.10.2007 - Legal Heirship Certificate.
A4 - 12.02.2008 - Lawer notice with acknowledgement.
A5 - 14.02.2008 - Returned postal cover.
A6 - 22.02.2008 - Reply Notice from Adv.C.H.Ashique.

Witness Examined and

Exhibits Marked for the Defendants : NIL

Court Exhibits:

C1 - 05.06.2008 - Report Submitted by Advocate C.Raveendran,
Advocate Commissioner.

- C1(a) - 05.06.2008 - Eye Sketch Submitted by Advocate C.Raveendran, Advocate Commissioner.
- C2 - 30.05.2009 - Report Submitted by Advocate C.Raveendran, Advocate Commissioner.
- C2(a) - 30.05.2009 - Eye Sketch Submitted by Advocate C.Raveendran, Advocate Commissioner.

Munsiff-Magistrate

Typed by : Abhilash S
Compared by : 1) Abhilash S.
2) Bindu M.

Judgment in O.S.33/2008

Dated.18.12.2017