

IN THE COURT OF THE MUNSIFF OF PARAPPANANGADI
Present:- Smt. Aswani Nalin,LL.M, Munsiff

Wednesday, the 7th day of August, 2024
the 16th day of Sravana, 1946

INTERLOCUTORY APPLICATION NO. 8 OF 2024
IN ORIGINAL SUIT NO:190 of 2022

Between:-

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| 1. Sarojini, 55 years, D/o Raman (Late) | } | <u>Petitioners</u>
Defendants |
| 2. Rajan, 52 years, S/o Raman (Late) | | |
| 3. Anitha, 49 years, D/o Raman (Late) | | |
| 4. Mini, 42 years, D/o Raman (Late) | | |
| 5. Sudhesh, 40 years, S/o Raman (Late)
(Chattikkal House, Ullanam amsom desom,
P.O.Ullanam North, Tirurangadi Taluk) | | |

And:-

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| Sunil, 45 years, S/o Raman (Late)
Chattikkal House, Ullanam amsom desom,
P.O.Ullanam North, Tirurangadi Taluk, | } | <u>Respondent</u>
Defendant |
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This petition coming on this day for final hearing before me in the presence of Sri.K.Anil Lal and Smt.U.V.Kalarekha, Advocates for the petitioners and of Sri.Rajesh.P, Advocate for the respondent, and having stood over to this day for consideration, the court passed the following:-

ORDER

This is a petition filed under order 39 Rule 1 by the defendants in the suit.

2. Petition averments in brief are as follows:-

The suit is filed for the partition of plaint B schedule property in accordance with the Hindu Succession Act. Admittedly, plaintiff and defendants have equal rights over plaint B schedule property and that each are entitled to 1/6 share of the plaint B schedule property. The averment in the plaint that the plaintiff is entitled for reservation of plaint schedule house is denied by the defendants. It was constructed with the permission and consent of the defendants and their deceased mother. The plaintiff filed IA 6/2024 for obtaining permission to carry out maintenance to the above temporary house alleging that the house required maintenance. The defendants had raised objection to the

permission for maintenance. The defendants had contended that the plaintiff is trying to enlarge the area of the house on the pretext of maintenance work. It was allowed on condition that the plaintiff should not do any construction extending area of the existing house. Now the plaintiff has violated the said direction of the court and have started extending the area by constructing foundation and the work is still going on the plaintiff intention is to reconstruct a big house at the place of old temporary house. The defendants also came to know that the existing tiled roof is being converted to concrete roof. He has already unloaded concrete materials for the said purposes. The defendants tried to block him but he is continuing the violation of the order of the court. Hence he should not be permitted to continue the violation. It is well settled that in the event a property is held by several co-owners in joint possession each co-owner is entitled to every inch of the common property. So one co-owner cannot take exclusive possession of property nor commit an act of waste, ouster or illegitimate use, and if he does so he can be restrained by an injunction. Here the plaintiff has done an illegitimate act of construction on the property in the guise of getting permission for maintenance. The respondents are intending to extend the area of construction. Hence this petition.

3. The respondent entered appearance and filed counter statement contending that the petition is not maintainable either in law or on facts. The petitioner has filed this petition concealing true facts. The contention raised in 3rd paragraph regarding the facts that the respondents have violated the order in IA 6/2024 and that the respondents are extending the area of construction was not true. It is also not true that the respondents have in violation to the order of this court started construction of the foundation and is trying to construct a new house and that he is also trying to extend the area of house is also not true. The respondent have not violated any rights of the petitioner herein. At the time of hearing in IA 06/2024 it was submitted by the petitioner herein that they have no objection in doing maintenance work without obstructing the way accordingly an undertaking affidavit was given before the court and so far the petitioner has not violated the undertaking. Ever since the respondents started construction, the petitioner had been harassing the respondents and his adolescent daughter and

his wife. They have several times given complaint before the police. The petitioner has no independent right in the plaint schedule property. Petitioner being the co-owner has no right to seek injunction against the respondents, who is also the co-owner. The petitioner has threatened that he will not allow the respondents to do the maintenance work in the house. The respondents have not done any act in violation of the court. The petitioner had installed pillars on the back of the house as part of replacing the leaky tiled roof with concrete. The foundation at the back of the old house is replaced with red stone foundation apart from this, the respondents have not done anything is in violation of order of this court.

4. Based on the aforesaid rival contentions, the following points came up for consideration:-

1. Whether the petitioner has got a prima facie case in his favour ?
2. In whose favour balance of convenience lies?
3. In the event of declining the relief that is cause any irreparable injury to the petitioner?
4. Whether the relief of temporary injunction as sought for is gradable or allowable?
5. Relief and costs?
5. Heard both sides.

6. **Point Nos.1 to 4** :-For the sake of convenience and brevity all these points are considered together. The plaintiff is seeking reservation in the house in plaint B schedule property. Earlier IA 6/2024 was filed by the respondent/plaintiff, which was allowed on condition that the plaintiff would file an affidavit that the renovation work in the house alone would be carried out and no extension shall be made therein. The learned counsel for the petitioners/ defendants herein argued that the respondent/plaintiff is seeking a motorable way through the properties to access their respective properties. There is 4 feet width way adjacent to the house in the plaint B schedule property. This construction is being done in order that the defendants would not get a convenient way through the plaint B schedule property. Now that the respondent/plaintiff in IA 6/2024 has violated the order of the court. He is making new constructions and on the guise of renovation constructing a new house by extending the area. The learned

counsel for the respondent/plaintiff argued that both the plaintiff and defendants have equal rights over plaint B schedule property and each sharer have 1/6 share in the property. The petitioners and their deceased mother had given permission oral consent to construct house in an extend of 4½ cents and that the plaintiff is residing with his family in the above mentioned house in the plaint B schedule property. The learned counsel for the respondent argued that the advocate commissioner has not reported the area of the house nor the number of the rooms and that the commissioner has reported that there is a way which is having an extend of 4 feet width from the northern side of the plaintiff's share which goes to the house of the 5th defendant which is a petitioner herein. He also argued that the house was in a dilapidated condition and the plaintiff/respondent and his family would not be able to survive in that house during rainy season. As the roof was supported by bamboo and wooden plants, the respondent started renovation work. The contention of the petitioners that the respondent may prevent the petitioners from obtaining a way is baseless. The advocate commissioner has made misleading statements in the commission report. There was no direction to the advocate commissioner to inspect the plaint B schedule property on the same date itself. It is also to be noted that in the first report the advocate commissioner has reported that the width of the way leading to the plaint B schedule property which caused to the northern side of the house of the plaintiff is 4 feet and in the second report the width was not reported whether the respondents have made any extension cannot be understood from the commission report. The respondent also argued that the second report of the commissioner as per the directions of the petitioners herein. He also argued that the advocate commissioner had first inspected the plaint schedule property in the year 2022 without specifying the description of the house of the plaintiff. But in the second report filed in 2024, she has compared the description before construction and after construction which is not possible.

7. The learned counsel for the respondent also argued that the contention of the petitioners that the respondent is extending area of the house is false and baseless. The Advocate commissioner has not reported any extension work instead she has mentioned about the slanted back side portion of the house near

to the water tank in paragraph 4 of the report, which was earlier used by the respondent herein as the work area. It had a sheet covered roof and basement made of mud. The respondent has removed the sheet and is now constructing a roof over the slanted back portion and is substituting laterite bricks over the mud for the basement which is already mentioned in the counter affidavit. The learned counsel for the respondent also argued that the respondent/plaintiff is residing in the house along with his family which includes adolescent daughters therefore a partition wall was inevitable for the family and is not an extension work to make the house bigger. He also argued that the new windows and doors are installed as part of renovation work. The commissioner has wrongly reported that new room is being constructed. The learned counsel for the respondent also argued that he has not violated any order of this court.

8. The first thing to be considered in a petition under Order 39 Rule 1 is that whether the petitioners could establish a prima facie arguable case in his favour. Here the petitioners contend that the respondent is seeking reservation in the house which is denied by the petitioner and the other petitioners. Moreover they have 4 feet width way adjacent to the house in which the respondent is residing which they are intending to widen at the time of partition. If new constructions are made in addition to the existing house that would hamper they are right to obtain a way at the time of partition. It is with the consent of the petitioners herein that on an undertaking that they would not make any new constructions permission was granted for renovation. But here on perusal of the commission report, it can be seen that the advocate commissioner has reported "മുൻ പരിശോധനാസമയത്ത് വീടിന്റെ പടിഞ്ഞാറു ഭാഗത്തു ചായ്വ് പോലെ കണ്ടിരുന്ന സ്ഥലത്തു ഇപ്പോൾ പുതുതായി തറ കെട്ടി ഉണ്ടാക്കി അതിനു മുകളിലായി വീടിനോട് ചേർത്തി ഒരു പുതിയ മുറി കൂടി നിർമ്മിച്ചിട്ടുണ്ട്. ഏതാനും ദിവസം മുൻപ് അന്യായക്കാരൻ ഭൂമിക്കടിയിലേക്ക് ക കീറി നാല് വരി ചെങ്കലിന്റെ തറ കെട്ടി പൂട്ടക്കുകയായിരുന്നു എന്ന് അഞ്ചാം പ്രതി പറഞ്ഞു. ഇപ്പോൾ പഴയ വീടിന്റെ തറ യുടെ നിരപ്പിനോട് ചേർന്ന് അതിന്റെ തുടർച്ചയായി പുതിയ ചെങ്കല്ല് കൊണ്ടുള്ള തറ കാണാം. ആയത്തിനു ഭൂനിരപ്പിൽ നിന്ന് രണ്ടു വരി ചെങ്കലിന്റെ ഉയരമുണ്ട്. തറ യ്ക്കു മുകളിലായി ഒമ്പതു വരി ചെങ്കലിന്റെ ഉയരത്തിൽ മൂന്ന് ഭാഗത്തും മതിൽ കെട്ടി ഒരു പുതിയ മുറി കൂടി പഴയ വീടിനോടു കൂട്ടിച്ചേർത്തി പണിതതായി കണ്ടു." So the commissioner has clearly reported that they are making new additional constructions in the existing house which is against the

undertaking they had made. In **Rajendran Pillai v. Bhasi** (reported in **2022(1)KLT Online 1209**) held that *“In the following instances, one co-owner can maintain a suit for injunction to protect his co-ownership right.*

(i) If one co-owner prevents the other from enjoying the common property, the affected co-owner can certainly approach the Court for appropriate relief including prohibitory injunction to protect his co- ownership right so that one co-owner can enjoy his right over the common property without hindrance to the other co-owner/co-owners.

(ii) one co-owner out of the many has no right to build on which is joint property, without the consent of others, notwithstanding that, the erection of such building may cause no direct loss to other joint owners or its stature can be termed as 'improvement', since on separation of sharers, one co-owner's right to enjoy his share shall not be hassled by such building.

(iii) a co-owner cannot be permitted to erect building in the common property without the consent of other co-owners, since one co-owner on separation of his share has every right to enjoy his property even as barren land for having gentle breeze or otherwise without a building therein.

(iv) one co-owner is not entitled to an injunction restraining another co-owner from exceeding his rights in the common property, absolutely and simply, because he is a co-owner.

(v) before an injunction can be issued, the plaintiff has to establish that he would sustain, by the act he complains, which materially would affect his position as co-owner or his enjoyment or accustomed user of the joint property would be inconvenienced or interfered with by the said act of another co-owner.

(vi) What relief to be granted in such Suits shall be decided by the court having jurisdiction guided by consideration of justice, equity and good conscience, after appraisal of the attending circumstances, the nature of injury caused and on weighing the balance of convenience.

(vii) If one co-owner feels or apprehends obstruction in the matter of enjoyment of his co- ownership right, he can very well institute a Suit restraining the other co-owner from obstructing the enjoyment within the sphere of co-ownership right, without disturbing the similar right of the other co- owner/co-owners, even without opting for partition”.

9. Here in this case, the commissioner has reported that new construction is seen for which foundation has been constructed. From the commission report and arguments I am satisfied that the petitioners could establish a prima facie

case in his favour. The apprehension that the petitioners would not be able to obtain way at the time of partition sounds true, even though all these matters are to be considered and disposed after a detailed trial. The IA 6/2024 was filed by the petitioner seeking permission to do repair works as the house in the plaint schedule property was in a dilapidated condition. The earlier order passed by this court in that IA is only to the extent that the petitioner was permitted to conduct repair in order to make it inhabitable as it was submitted that it was in a dilapidated condition. It does not mean that they can make any additions or new constructions. The right granted by this court is only to conduct repair in the dilapidated house to make it a habitable one. If an unfettered right is given it would adversely affect the interest of other parties. So it cannot be entertained. The permission was granted only because plaintiff is residing there and it was submitted that the house is in dilapidated condition and that it is not safe for him and his family including adolescent daughters. It is also further clarified that only for the reason that these petitions are allowed, the parties are not entitled to any claim under the head of equity or reservation. Thus, this court is of the view that balance of convenience is in favour of petitioner and if injunction is not allowed it would cause irreparable injury to the petitioner. Therefore if injunction is not granted, the petitioners would sustain irreparable loss and injury. Point Nos 1 to 4 is found accordingly. Therefore I inclined to allow this petition in part.

10. **Point No.5 :-** Considering the facts and circumstances of this case, the parties shall bear their respective costs.

In the result, the IA is allowed in part. The respondent and his men are restrained from any new construction by extending the area and also further constructions in the area shown by the advocate commissioner in 4th paragraph with respect to the construction of new room.

(Dictated to the Confidential Assistant, transcribed by her corrected and pronounced by me in open court to on this the 7th day of August, 2024.)

Munsiff