

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

Thursday, the 12th day of September, 2024
the 21st day of Bhadra, 1946

INTERLOCUTORY APPLICATION NO. 2 OF 2024
in ORIGINAL SUIT NO: 232 of 2024

Between:-

1. Thayumma, 64 years, D/o Late Palapetti Marakkarutty Haji
W/o Kuhahammed Kudalkuzhi
2. Sainaba, 61 years, D/o Late Palapetti Marakkarutty Haji
W/o Kunhalassan Mullanmadakkal.
3. Subaida, 57 years, D/o Late Palapetti Marakkarutty Haji
W/o Ahammedkutty P. Kundanettichal
4. Aleema, 52 years, D/o Late Palapetti Marakkarutty Haji
W/o Assain Payengarathodi.
(Pallikkal amsom desom, P.O.Pallikkal
Chettiyarmad, PIN 673634, Kondotty Taluk)

Petitioners
Plaintiffs

And:-

Junaid, 35 years, S/o Thayyancheri Veeran Moideen
Thekkevalappil House, Pallikkal amsom desom,
P.O.Pallikkal, Chettiyarmad, PIN 673634, Kondotty Taluk)

Respondent
Defendant

This petition coming on the 3rd day of September, 2024 for final hearing before me in the presence of Sri.C.P.Musthafa and Smt.Ayisha.P.P, Advocates for the petitioners and of Sri.Subeer.K, Advocate for the respondent and having stood over to this day for consideration, the court passed the following:-

ORDER

This is the petition filed by the plaintiffs in the suit under Order 39 Rule 1 of CPC.

2. Petition averments in brief are as follows:- The plaint schedule property belongs to the plaintiffs by way of document No.3290/2021. Item No.18 in the said partition deed is set apart to the plaintiffs, who are 5 to 8 parties to the partition deed and since then they have been in possession and was paying tax. There is no house in the plaint schedule property and the plaintiffs are

residing far away. They come to the plaint schedule property once in a while for the purpose of cultivation. The plaintiffs have exclusive right and possession over the plaint schedule property and the defendant has no right over them. There is a road which has been set apart on the northern side of item No.18 as per the partition deed, which is of 2.70 meter width and the plaintiffs have not raised any objection from using the said way by the people in and around that locality. While so, when the plaintiffs tried to construct a wall on the boundary of the northern side of the plaint schedule property, on 28/07/2024 the defendant along with his hench men trespassed into the plaint schedule property and obstructed the construction and they asked for 12 feet width way on the northern side of the plaintiffs' property for which the plaintiffs was asked to leave some property, and the plaintiffs did not accede to it. The defendant threatened to even kill the plaintiffs. Though they returned, there is every possibility that they would again trespass into plaint schedule property and attach portion of plaint schedule property to the road. Hence this petition.

3. The respondent entered appearance and filed counter statement contending that the petition is not maintainable and the petitioners have no right to institute such a suit. It is not true that the plaintiffs have right over plaint schedule property. It is true that there is no house in the plaint schedule property but it is not true that the petitioners are doing any sort of cultivation in the plaint schedule property. It is also not true that the 2.70 meter width way had been set apart at the time of partition. In fact, the road on the northern side of the plaint schedule property is a Panchayat road named Adikarath Anganwadi road, which had been in existence from 1996. The said road was of 4 meters width, within Pallikkal panchayat ward No.22. This is also included in the Panchayath Assets Register No.255. The defendant as well as the people of the locality had been using the said road. It is not true that on 28.07.2024 when the plaintiffs tried to construct a wall on the northern side of the plaint schedule

property, the defendant obstructed them and threatened them. In fact, the defendant had not tried to trespass into plaintiff schedule property or threatened them. On the other hand the petitioners are trying to encroach upon the Panchayat road and construct wall. There is no boundary on the northern side of the plaintiff schedule property. The defendant had preferred a complaint before the panchayath secretary. Notice was also served on the plaintiffs' brother Muhammed Kutty, Nancheri and the direction was given to participate in a meeting at Panchayat office. It is pending before the Panchayat for consideration and this petition has been filed by concealing above facts. By virtue of the ad-interim injunction the petitioners are trying to encroach upon the Panchayat road and construct wall. The petitioners are claiming right over Panchayat road. Hence the petition is to be dismissed with costs.

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

1. Whether the petitioners have 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 petitioners?
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 :-** This is a petition for injunction. In a petition under Order 39 Rule 1 the first thing to be considered is whether petitioner could establish a prima facie case. In **Muthukoya V. Muthukoya, (1988(1)KLT 654)** **His Lordship KL020259299202425E Justice U L Bhat** clearly elucidates this concept: *"There must be some material on record in support of the claim of legal right put forward by the person who seeks interlocutory relief of injunction; such*

material must, either by itself or in the light of material placed before the court by the opposite party, satisfy the court that it could, at that stage and under those circumstances act on it. This is precisely what can be comprehended by the expression 'prima facie case'." From the above discussion it is clear that in order to obtain an interim injunction, the plaintiffs have to establish prima facie case in favour of him. In the case in hand admittedly there is no boundary on the northern side of the plaintiffs' property. It is true that 2.70 meter width had been set apart in the partition deed. Admittedly there is no boundary on the northern side of the plaint schedule property. Unless and until there is a well defined boundary on the northern side of the plaint schedule property, it is not possible to identify the way which is on the northern side of the plaint schedule property. The plaintiffs also admit that the way which is on the northern side of the plaintiffs' property had been using by the people in the locality. Even though the commission report is silent with respect to the same, the copy of the complaint and Asset Register is also seen produced from the side of the respondent. So whether the said road is included in the Asset Register and aspects regarding the same can only be decided after identifying the plaint schedule properties. Therefore if the petitioners construct a wall on the northern side of the petition schedule property on the strength of injunction that would cause irreparable injury to the defendant. From the partition deed it can be seen that a way which is of 2.70 metre width is provided on the northern side of item No.18. The petitioners could establish a prima facie case in favour of him. In **Beena Kannan v.Abdullakutty (2013(1) KLT SN 127 (C.No.111)** held that *"there is prima facie case and balance of convenience in favour of the plaintiffs, injunction need not be granted, if the irreparable injury caused to the defendant will be more compared to the loss caused to the plaintiffs, if injunction is not granted, then normally, injunction should not be granted"*. In the case in hand the width of the way whether it is a public way and matters connected therewith can only be

decided after detailed trial. But if the injunction is granted and the petitioners are allowed to construct the wall it might cause irreparable injury to the defendant/respondent. Balance of convenience is also found in favour of the respondent. Hence Point Nos.2 and 3 are found against the petitioners. On the basis of the above findings parties are directed to maintain status quo as reported by the commissioner till the disposal of the suit.

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

In the result, the parties are directed to maintain status quo as reported by the commissioner till the disposal of the suit. No costs.

(Dictated to the Confidential Assistant, transcribed by her corrected and pronounced by me in open court to on this the 12th day of September, 2024.)

Munsiff

//True copy//

Appendix : Nil

Munsiff

Typed by: Jishy.P

Compared by 1.

2.

Fair order in IA 2 of 2024 in
in OS. 232 of 2024
Dated: 12.09.2024