

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

Saturday, the 17th day of February, 2024
the 28th day of Magha, 1945

INTERLOCUTORY APPLICATION Nos. 2 of 2023 and 6 of 2024
IN ORIGINAL SUIT NO.286 OF 2023

IA 2/2023

Between:-

1. Ungungal Namskarapalli Committee
P.O.Peruvallur, PIN 673638, Malappuram District,
Represented by Secretary Muhammed Mujeeb Rahman,
54 years, P.O.Peruvallur, PIN 673638, Peruvallur amsom
Kernallur desom, Tirurangadi Taluk. } Petitioners
} plaintiffs
2. Muhammed Mujeeb Rahman, 54 years.
S/o Veeran Haji, Pazheri House, P.O.Peruvallur,
PIN 673638, Peruvallur amsom Kernallur desom,
Tirurangadi Taluk, .Secretary Ungungal Namaskarapalli
Committee, P.O.Pervallur, PIN 673638, Malappuram District,

And:-

Falaludheen, 43 years, S/o Neyyan Muhammed,
Ooneeri House, P.O.Peruvallur, PIN 673638,
Peruvallur amsom Kernallur desom, Tirurangadi Taluk. } Respondent
} Defendant
Karad desom, Kondotty Taluk, Malappuram District.

IA 6/2024

Between:-

Falaludheen, 43 years, S/o Neyyan Muhammed,
Ooneeri House, P.O.Peruvallur, PIN 673638,
Peruvallur amsom Kernallur desom, Tirurangadi Taluk. } Petitioner
} Defendant
Karad desom, Kondotty Taluk, Malappuram District.

And:-

1. Ungungal Namskarapalli Committee
P.O.Peruvallur, PIN 673638, Malappuram District,
Represented by Secretary Muhammed Mujeeb Rahman,
54 years, P.O.Peruvallur, PIN 673638, Peruvallur amsom
Kernallur desom, Tirurangadi Taluk. } Respondents
} Plaintiffs
2. Muhammed Mujeeb Rahman, 54 years.
S/o Veeran Haji, Pazheri House, P.O.Peruvallur,
PIN 673638, Peruvallur amsom Kernallur desom,
Tirurangadi Taluk, Secretary Ungungal Namaskarapalli
Committee, P.O.Peruvallur, PIN 673638, Malappuram District,

These petitions coming on the 7th February, 2024 for final hearing before me in the presence of Sri.P.Aboobacker Sidheeque Advocate for the petitioners in IA 2/2023 and for respondents in IA 6/2024 and Sri.S.Hariharan and Sri.P.Ajayakumar, Advocates for the respondent in IA 2/2023 and for the petitioners 6/2024 and having stood over to this day for consideration, the court passed the following:-

COMMON ORDER

IA 2/2023

This IA is filed by the plaintiff in the suit under O.39 R. 1 and 2 of CPC for injunction.

2. Brief facts of the petition are as follows. The suit is filed by Ungungal Namaskarapalli and the petitioner is the Secretary of the Committee who is the plaintiff. The suit is for permanent prohibitory injunction against the defendants from encroaching upon the plaint B schedule way which is used to access the plaint A schedule property and to make any alterations, encroachments, constructions or from committing any waste in the plaint B schedule way. The first petitioner obtained the plaint A schedule property from Mohammedkutty, S/o Pazheri Veeran by way of Wakf deed No. 2117/1961 of Tirurangadi SRO. Even prior to the execution of this document, the property was given to the Committee orally by the said Mohammedkutty. Subsequently the Committee had constructed a Mosque in the plaint A schedule property. Since then the muslims of that locality had been performing worship and other prayers and is still doing so. Later in 1998 the old building of the Mosque was completely demolished and rebuilt as a concrete building. Total extend of plaint A schedule property is $7 \frac{3}{4}$ cents. After that during the reconstruction of the Mosque in the year 1998 Haji. P. Veeran, who was the then President of the Committee at that time had given $1 \frac{1}{4}$ cents of land on the northern and eastern part of the property orally. Thus the total extent of plaint A schedule property is 9 cents. From Padikkal Karuvankal road which is on the eastern side there is a way which is of 12 feet from east to west. It starts from Padikkal Karuvankal road on the eastern side and reaches plaint A schedule property on the western side.

There is no way other than plaintiff B schedule property to access plaintiff A schedule property and the plaintiffs have been using the property peacefully, continuously and without any interruption for the past 60 years. If the said way is blocked, the plaintiff A schedule property would be land locked. But in the year 2022 since the defendants purchased the property on the south east side of plaintiff B schedule way they were trying to encroach the plaintiff A schedule way and now they are trying to encroach upon plaintiff B schedule way to obstruct plaintiff B schedule way. Finally on 16.10.2023 at about 8 AM, the defendants along with their henchmen entered plaintiff B schedule way tried to obstruct and to make constructions therein. But due to the timely intervention of the plaintiff and local people, the plaintiff went away but the petitioners are apprehending obstruction of plaintiff B schedule way by defendants. Hence this petition.

3. Respondent filed counter statement contending that the petitioner has no right to institute such a suit. It is an unregistered society. The suit is barred as per the provisions of Kerala Wakf Act. This court has no jurisdiction to try this suit. There is no way as alleged as plaintiff B schedule way. There was only 3 feet width way. There is a gate at the entrance of the gate which is of 3 feet. Initially there was only a beaten track and subsequently it was widened as 3 feet way. The contention raised in the plaint that there is 12 feet width way is false. After leaving the said way the restricted portion of the property has been obtained by the respondents as per document No.1790/2022 and 1865/2022 of SRO, Tenjipalam and they have been in absolute ownership and possession of the said property. There is only 3 feet width way to the Mosque. Prior to the institution of the suit another suit was filed before the Wakf Tribunal as W.O.S.48/23 contending that the defendants had been encroaching upon the plaintiff's property. IA.448/23 was also filed for injunction which was dismissed by the Wakf Tribunal. The respondents in fact had constructed pillars and construction is made without any obstruction to the 3 feet width way which proceeds to the plaintiff A schedule property. This petition is filed only to obstruct the constructions being done in the respondent's property. As of now there is 10 feet width way in the alleged plaintiff B schedule way. If the construction is not

allowed, it will cause irreparable injury to the respondent. Prima-facie case and balance of convenience is also in favour of the respondent. Hence the petition is to be dismissed with costs.

IA.No.6/2024

This petition is filed under O.39 R.4 of CPC. _

2. Brief averments in the petition are as follows.. Ad-interim injunction was passed on 6/11/2023. The respondent in IA.2/2023 had appeared and filed objection. There is no way as shown as plaint B schedule way. The Mosque obtained property by way of document No.2117/1961 of Tirurangadi SRO. It was only a 3 feet width way. There is no such plaint B schedule way as alleged by the plaintiff/respondents. After construction of pillar the construction of shop rooms the suit has been filed to obstruct the further constructions. The constructions made by the petitioners will not in any way obstruct the 3 feet way that is available for the plaintiff. Moreover the construction is being done leaving a width of 10 feet. The petitioner/defendant had obtained building permit and started construction one month prior to the institution of the suit. Pillars are being constructed. The Commissioner had also reported the same. The construction will not in any way obstruct the ingress and egress in the plaint B schedule way. As an order of ad-interim injunction is passed, it will lead to further obstructions. Hence the petition is filed to vary the order passed in IA.2/2023 on 6/11/2023. If the construction work is not proceeded with it would result in irreparable loss to the petitioners and it would result in the destruction in the constructions made so far and the materials already purchased for construction will also be destroyed.

3. The respondents filed counter contending that the petitioner had no right to file a petition to vary the ad-interim injunction order. The contention that there is only 3 feet width way is false. There is 12 feet width way to access plaint A schedule property. The Commissioner has also noted 12 feet width in plaint B schedule way. The petitioners are trying to encroach the plaint B schedule way and make constructions. Therefore no construction encroaching 12 feet width way can be allowed. Constructions made by petitioners are illegal

and Advocate Commissioner had noted pillars encroaching plaint B schedule way. This petition is not maintainable and hence liable to be dismissed.

4. The parties are herein after referred to their respective status in the original suit for convenience. Ext.A1 to A7, Ext.C1 , C1(a) and Ext.B1 to B8 are tentatively marked in IA 2/2023 to consider these applications.

5. Heard both sides. Peruse the records.

6. The following point arise for consideration.

1. Whether prima- facie case made out in favour of the plaintiff/petitioner?
2. Whether the balance of convenience is with the Plaintiff/Petitioner and refusal of injunction will cause irreparable injury to him?
3. What shall be the order as to costs?

7. **Point Nos.1 to 3:-** All these points are considered together for brevity and avoiding repetition. Plaintiff is claiming exclusive right over plaint B schedule way. The contention of the plaintiff is that he had acquired right over plaint B schedule way by easement by prescription. The contention of the learned counsel for the plaintiffs is that the plaintiffs have acquired right of easement by prescription over plaint B schedule way which is of 12 feet width. The defendants on the other hand contends that admittedly there is a way which leads to the plaint A schedule property. But the said way is of 3 feet width. On perusal of Commission report also it is clear that there is only a 3 feet width as the Commissioner had reported a 3 feet at the entrance of the mosque which is on the western side of plaint B schedule way. It is to be noted that one of the important factors which the plaintiff has to be proved in a suit of injunction simpliciter is in possession and that the defendant can actually be restrained from trespassing into plaint schedule property. For that purpose, it is necessary that, the property is well demarcated by actual physical boundaries. In the present situation, the commission report shows that the defendant's property as well as the property claimed by the petitioner as plaint B schedule way is lying contiguously without any actual physical boundaries . In paragraph 10 of page 6 of Ext.C1 report the Commissioner had reported 'അന്യായം ബി പട്ടികയുടെ

കിഴക്ക്, വടക്ക്, പടിഞ്ഞാറേ അതിരുകൾ വ്യക്തമാണ്. എങ്കിലും തെക്കേ അതിരൂ വ്യക്തമല്ലാത്തതിനാൽ ബി പട്ടിക വഴിയുടെ വീതി കണക്കാക്കുന്നത് ബുദ്ധിമുട്ടാണ്. ബി പട്ടികയുടെ വടക്കേ അതിരിൽ നിന്നോ (CH) വടക്കേ അതിരിൽ ഉള്ള electric post (EL) നിന്നോ വ്യക്തമായി ബി പട്ടികയുടെ തെക്കേ അതിർ കണക്കാക്കുകയോ എതിർ കക്ഷിയുടെ വടക്കേ അതിരൂ കെട്ടി തിരിക്കുകയോ ചെയ്യാൽ വ്യവഹാര തർക്കത്തിന് അനുയോജ്യമായിരിക്കും. The relief sought in the petition is to restrain the defendants from trespassing into the plaint B schedule property and from making any construction or altering the way or committing any waste therein. When the property is not well bounded by physical boundaries and when there is no physical demarcation separating the petition schedule property with the property of respondents, a temporary injunction restraining the respondents from trespassing is not permissible. Admittedly there is a pathway on the eastern side of plaint schedule property. n **2013(1) KLT SN.127 (Beena Kannan V Abdullakutty)**..Specific Relief Act 1963, Sections.38 &41-Civil Procedure Code 1908, O.XXXIX Rule I . It was held by the Hon'ble High Court that .Even if 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. The dispute is with regard to the width of the plaint B schedule way. The contention of the plaintiff is that there is a width of 12 feet way and the contention of the respondent is that there is only a 3 feet width way on the eastern side of plaint A schedule property. The Advocate Commissioner has not reported a consistent width for plaint B schedule way in Ext.C1 report. From the entrance portion of plaint B schedule way from the eastern side the Advocate Commissioner had reported 13 feet width which is the FG portion. From the alleged portion of pillars that were constructed from the defendants the Advocate Commissioner had reported 10 feet width and 11 feet width and from the portion where there is a Panchayath well, the width is calculated as 12 feet and the portion to enter the Mosque is of 3 feet width. It is also reported by the Advocate Commissioner in Ext.C1 report അന്യായം ബി പട്ടിക വഹകൾക്ക് കിഴക്ക് റോഡിൽ നിന്നും മീറ്റർ ദൂരം അന്യായം എ പട്ടികയിലേക്ക് ഉള്ളതായും ടി

വഹകളുടെ തെക്കേ അതിർ വ്യക്തമല്ലാത്തതിനാൽ വീതി വ്യക്തമായി കണക്കാക്കാൻ കഴിഞ്ഞില്ല. പല ഭാഗത്തും പല വീതി ആയിരുന്നു So it can be concluded from the discussion that the plaintiff has established a prima-facie case as to the existence and entitlement of way on the eastern side of plaint schedule property. But whether the plaintiff is entitled to a 12 feet width or a 3 feet width can be decided only after a detailed trial for which it is desirable that the subject matter is to be preserved. But as per the balance of convenience and irreparable injury portion is concerned it is already reported by the Advocate Commissioner in Ext.C1 that the defendants had already constructed pillars and the defendants argued the construction had been done one month prior to the institution of suit. They have also produce the permit and plan for the said construction which is marked as B8. Hence if an injunction is granted at this stage the loss caused to the defendants will be great as the constructions made so far would be destroyed and also the materials they have purchased for further construction would also be deteriorated. So taking into consideration the said facts the irreparable injury that would be caused to the defendants would be greater than that of the plaintiffs. If injunction is granted, it would in no way cause irreparable injury to the plaintiff. Hence considering all these facts, the IA is partly allowed. The injunction shall be confined to 10 feet width of plaint B schedule way with the condition that if the final decision of the case goes against the defendant, then they are liable to remove the portion of construction without raising any objection and at their own expense.

In the result, the IA 2/2023 is partly allowed and IA 6/2024 is allowed.. The injunction shall be confined to 10 feet width of plaint B schedule way with the condition that if the final decision of the case goes against the defendant, then they are liable to remove the portion of construction without raising any objection and at their own expense. No order as to costs.

Dictated to the Confidential Assistant, transcribed and typed by her, corrected and pronounced by me in Open Court on this the 17th day of February, 2024.

Munsiff

Appendix:**Petitioner's Witnesses:- Nil****Petitioner's Exhibits:**

- A1- 21.11.1961 Certified copy of wakf deed No.2117/1961, SRO, Tirurangadi.
 A2- 2.011.2023 Certificate of registration Kerala State of Waqf Board.
 A3- 15.09.1971 Photocopy of Partition deed No.2075/1971,
 SRO, Tirurangadi.
 A4- 09.09.2013 Photocopy of Partition deed No.4612/2013,SRO, Tirurangadi.
 A5-13.07.2020 Photocopy of Gift deed No.1715/2020, SRO, Tirurangadi.
 A6-13.07.2020 Photocopy of Gift deed No.1716/2020, SRO, Tirurangadi.
 A7- – Register No. 6497/1988 of Waqf Ugungal Namskarapalli
 Committee

Respondent's witnesses: Nil**Respondent's Exhibits**

- B1- 04.11.2023 Certified copy of order IA 448/2023 in W.O.S No.48/2023
 of Waqf Tribunal, Kozhikode
 B2- 25.03.2022 Jenm Assignment deed No.1790/2022, SRO, Thenhipalam .
 B3- 25.03.2022 Jenm Assignment deed No.1865/2022, SRO, Thenhipalam .
 B4- 13.07.2020 Photo copy of Gift deed No.1715/2020, SRO, Thenhipalam
 B5- 13.07.2020 Photo copy of Gift deed No.1716/2020, SRO, Thenhipalam .
 B6- 25.08.194 Certified copy of Partition deed No.1868/1940,
 SRO, Tirurangadi
 B7- 23.04.2022 Basic Tax receipt
 B8- 29.09.2023 Copy of site Approval plan and Building permit

Court Exhibits:-

- C1- 11.11.2023 Commissioner's report by Adv.Sreejith.K
 C1(a)-11.11.2023 Commissioner's sketch by Adv.Sreejith.K

Munsiff

