

IN THE COURT OF THE MUNSIFF OF ALATHUR
Present:- Sri.Binu.P., Munsiff, Alathur

Saturday, 20th day of January, 2024
(30th day of Pouasha, 1945 S.E)

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INTERLOCUTORY APPLICATION No.01/2023(IA.1284/2023)
IN
ORIGINAL SUIT No.231/2023

Chandrasekharan Nair, aged 82 years, S/o Bhanunni Menon,
residing at Santhi Nagar, DPO Road, Palakkad.

} Petitioner/
Plaintiff

Vs.

Gopakumar, aged about 53 years, S/o Dhamodar Nair,
residing at Kuthanur Highter Secondary School,
Kuthanur, Palakkkad.

} Respondent/
Defendant

This petition is coming on this day for hearing before me in the presence of Sri.A.V.Ravi, Sri.Sandeep.S and Aiswarya.C.S, Advocates for the petitioner and of Sri.N.R.Venkitanarayanand and Sri.V.V.Sivaraman, Advocates for the respondent and this Court passed the following.

ORDER

This petition is filed by the petitioner against the respondent under Order XXXIX Rule 1 of the Code of Civil Procedure.

2. The brief facts of the petition is as follows :

The petitioner is the plaintiff. The petitioner is the owner in possession of the petition schedule property by virtue of sale deed No.137/1969 of SRO, Kuzhalmannam and enjoying the same by paying tax. After the purchase of the said property the petitioner has been entering into the petition schedule property through the southern main gate of the school abutting the main road and through the iron gate which is on the eastern extreme portion of school compound which is open to the public way. The petitioner has been enjoying the way openly, continuously, without any obstruction since 1969 onwards and he is having easement right over the way and respondent has no right to obstruct the same. Due to the enmical terms between the petitioner and the respondent, the respondent obstructed the entry of the petitioner into the petition schedule property by locking the two gates. The petitioner is residing far away from the petition schedule property. On 26.04.2023 when the petitioner went to the petition schedule property it was found that two gates were under lock and key. When the plaintiff enquired about the same the respondent agitated with him. The plaintiff is an aged person and having ailment. Hence the petition.

3. The respondent filed counter statement to the following effect.

The petition is not maintainable either in law or on facts. The respondent submitted that the suit is liable to be dismissed under Order VII Rule 3 of the Code of Civil Procedure. The suit is not maintainable under Section 33 and 6 of the Kerala Education Act. The plaintiff has no title or possession over the petition schedule property. Hence value the suit as contemplated under Section 27(1) (A) of the Kerala Court Fees Act. There are three rooms in the petition schedule building which are being used for the functioning of the school and its allied activities. The petition schedule building is the part and parcel of the Kuthannur Higher Secondary School in which 1400 students are studying. The defendant is the Manager of the School. The plaintiff is claiming right of way

through the Kuthannur Higher Secondary School compound. If the relief sought in the petition is allowed it would jeopardize the security of the school. There were various litigation between the parties and the predecessors in interest. The school compound is fenced on its boundaries and erected gates from the date of establishment of the school and periodical maintenance are being carried out from time to time. The gates extend in the compound wall / fence of the school compound will be kept under lock and key for the safety of the school. For the said reasons the petition is liable to be dismissed.

4. From the side of the petitioner exhibits A1 to A4 and C1 are marked. There is no documentary evidence from the side of the respondent.

5. Heard both sides.

6. Following points arose for consideration:

1. Whether the petitioner made out prima facie case and balance of convenience in favour of him ?
2. Whether the petitioner will be put irreparable hardship, if injunction is not granted ?
3. Reliefs and costs ?

7. Point Nos.1 and 2 :- Considering the nature of the case, these points are being considered together. As per the case of the petitioner, he obtained the petition schedule property by virtue of sale deed No.137/1969 of SRO, Kuzhalmannam and from the date of purchase he enters through the school compound continuously, freely, openly, without any interruption. Therefore, he is having right of easement. Since the petitioner and the respondent are in enmical terms, in order to vex the petitioner the respondent kept the gates under lock and key. On the other hand the respondent vehemently contended the petition allegations. According to the respondent, the allegation of right, title and interest upon the property acquired by the petitioner upon the property is false.

The respondent kept the gates under lock and key for the safety of the school. The petitioner is claiming right of way through the Kuthannur Higher Secondary School compound and if the relief sought in the petition is allowed, it would cause threat to the security of the school.

8. From the side of the petitioner, exhibits A1 to A4 and exhibits C1 report were marked. Exhibit A1 is the photocopy of the title deed No.137/1969 and exhibit A2 is the photocopy of the correction deed. Exhibits A3 and A4 are the certified copy of the judgment and decree in O.S. No.120/2017 of this court respectively.

9. The learned counsel for the respondent filed notes of argument and argued that there was a litigation before the Honourable Sub Court, Palakkad regarding the school. The respondent has obtained a decree and the decree has been upheld by the Honourable Supreme Court of India. Yet another suit filed pertaining to the school which was dismissed by the Honourable Sub Court by accepting the contentions of the respondent. The order of the remand of the case by the Honourable High Court of Kerala has been stayed by the Honourable Supreme Court of India in the special leave petition preferred by the defendant. From the above argument of the learned counsel for the respondent one fact is revealed that there were litigation in respect of the school. But the respondent failed to produce any document to show that how far the prior litigation are relevant in the present case on hand and for deciding the present petition for temporary injunction.

10. Another argument advanced by the respondent is that the suit is not maintainable in view of the provisions contemplated under Order VII Rule 3 of the Code of Civil Procedure as no schedule is annexed in respect of the immovable property pertaining to which the relief is to be granted. The learned counsel for the petitioner also filed notes of argument and it is argued that as far as Order VII Rule 3 of the Code is concerned the petitioner has to disclose in

detail the property of the petitioner and not the respondent. In this case the property of the plaintiff is specifically mentioned in the plaint as well as in the interlocutory application, apart from that the school authorities have not disputed the case advanced by the petitioner.

11. On the perusal of the plaint and interlocutory application, the property in the petition is specifically scheduled and it is true that the property of the respondent is not scheduled. But the petitioner specifically pleaded the existence of the school compound and the gates extant. The respondent also admitted that the school compound is well bounded in all four boundaries. Not only that the Advocate Commissioner who conducted local inspection filed detailed report. From exhibit C1 the existence of the petition schedule property at the school compound is specifically reported by the Commissioner. At present for deciding the interlocutory application this court is not inclined to give much importance to the above said argument of the respondent, due to the reason that sufficient materials are available for identifying the petition schedule properties.

12. Another argument of the respondent is that pleading in the plaint are vague, ambiguous and unclear. There is no averment in the plaint and petition, who is the servient petitioner and what is the servient tenement. On the other hand, the learned counsel for the petitioner submitted that there is specific pleading in the affidavit in respect of both tenements and there is no ambiguity. The right of the petitioner is specifically pleaded. On the perusal of the averments in the petition it is stated that the petitioner is the absolute owner in possession of the petition schedule property and from the date of the purchase of the property, he enters into the petition schedule property through the main gate and the eastern iron gate of the school compound and it is also pleaded that he has been using the gate openly, freely, continuously, without any interruption and he has right of easement. From the above discussion it is clear that there is specific pleading in respect of the easement. The ingredients of the right of prescriptive

easement is also unambiguously pleaded.

13. The learned counsel for the respondent also argued that the petition schedule building is occupied and used by the respondent and the same is used for the school activities. No relief could be granted in view of the provisions contemplated under Sections 33 and 6 of the Kerala Education Act. The learned counsel for the petitioner countered the argument by submitting that this is not a dispute coming under the provisions of Kerala Education Act and Rules. If there is a specific provision in the Kerala Education Act and Rules in respect of the redressal of grievance in such circumstance alone the provisions of the Kerala Education Act and Rules will be applicable. So this is not a case come under the provisions of Kerala Education Act and Rules. By considering the rival arguments from both sides this court comes to a conclusion that the above said argument can be decided only through a fullfledged trial. Hence the above said argument cannot be taken into consideration at this stage of the suit for deciding the present petition.

14. The counsel for the respondent argued that the petition schedule building is in the occupation and use of the respondent and the same is used for school activities. The decree passed in O.S. No.120/2017 is under challenge by way of civil appeal before the Honourable District Court. Based on the decree in O.S. No.120/2017 no relief could be granted in the suit or in the injunction petition.

15. From the side of the respondent no document was produced to show that the petition schedule building is in the possession of the respondent and the decree is under challenge. In this circumstance exhibits A3 and A4 judgment and decree respectively are the material documents to decide the possession of petition schedule property. On the perusal of exhibits A3 and A4 the above said suit is between the same parties as in this case. The schedule in exhibit A4 decree and schedule in the present petition are one and the same. As per exhibit

A3 – the defendant and his men are restrained by way of permanent prohibitory injunction from trespassing upon the plaintiff schedule property, from committing any act of waste therein and from conducting classes in the petition schedule property. The respondent has not produced any documents to discredit the evidence of the petitioner. The respondent has not produced any documents to show that he preferred appeal against the above said decree. Hence this court is relied upon exhibits A3 and A4 judgment and decree to come to a conclusion the the petition schedule property is in the absolute possession and enjoyment of the petitioner and exhibits A1 and A2 documents also show that the petitioner is the title holder of the petition schedule property.

16. From the analysis of the evidence it is revealed that the petition schedule property is in the possession of the petitioner and he is the title holder of the petition schedule property. Exhibit A1 shows that he purchased the property in the year 1969. The existence of the doctrine of servient tenement is also revealed from exhibit C1 report. In exhibit C1 report the Commissioner reported that the petition schedule property is situated within the school compound. The Commissioner also reported that it is possible to enter into the petition schedule property through the main gate of the school compound and also through the iron gate which is situated on the eastern portion of the school compound and the same was under lock and key. The Commissioner reported that at the time of her visit the main gate was opened. From the report of the Commissioner it is clear that the entry available to the petitioner to enter into his property is only through the two gates and there is no alternative way. The eastern gate was under lock and key as per the report of the Commissioner. That substantiate the pleadings of the petitioner. If the two gates of the school compound are under lock and key the petitioner cannot enter into his property. The petitioner has specific case that his entry into his property is restrained by the respondent.

17. On the analysis of the case advanced by both sides two matters are to

be taken into consideration. Firstly, it is to be considered that whether the petitioner has any alternative way for the ingress and egress to the petition schedule property. Secondly, it is to be taken into consideration that whether the locking of the gate is necessary for the safety of the school compound. In exhibit C1 it is specifically reported that the petition schedule property is situated within the boundary of the school compound. As per exhibit C1 it is made clear that the only available entry into the petition schedule property are the two gates which is on the south and eastern boundaries of the school compound. The Commissioner also reported that he visited the school at the school time. The southern main gate was opened during his visit and the eastern iron gate was under lock and key. Exhibit C1 is also made clear that the only way available to the petition schedule property is the eastern and southern gates of the school compound.

18. In the present case the petitioner has prima facie shows the right to enter into the petition schedule property as the only way available to the petitioner to enter into his property is the gates installed on the compound wall/fence of the respondent's property. The same was specifically reported by the Commissioner in exhibit C1. The right of the petitioner to enter into the petition schedule property and the safety of the school are to be protected.

19. From the above discussions it is seen that the petitioner has made out a prima face case and the balance of convenience also in his favour. If injunction is not granted petitioner will cause irreparable injury. But by considering the safety of the school this court is not inclined to grant relief by directing the respondent not to lock the iron gate on the eastern side of the school compound. Hence the prayer for handing over of the key is granted. The points are answered accordingly.

20. Point No.3 :- In the result, the petition is allowed in part as follows :

- i. The respondent is directed by way of ad-interim

mandatory injunction to hand over a key, of the iron gate on the eastern side of the school compound on the adjacent to the public road is locked, to the petitioner.

ii. No order as to costs.

Dictated to Confidential Assistant, transcribed and typed by him, corrected and pronounced by me in open court on this the 20th day of January, 2024.

Munsiff

APPENDIX:-

Petitioner's Witness Examined:- Nil

Petitioner's Exhibits Marked :-

- | | | | |
|----|------------|---|--|
| A1 | 26.02.1969 | : | Copy of Assignment deed No.137/1969 of SRO., Kuzhalmannam executed by Balakrishnan and 4 others in the name of Chandrasekharan Nair. |
| A2 | 05.08.1969 | : | Copy of rectified deed No.653/1969 of SRO., Kuzhalmannam. |
| A3 | 30.06.2021 | : | Certified copy of Judgment in OS.120/2017 on the file of this court. |
| A4 | 30.06.2021 | : | Certified copy of Decree in OS.120/2017 on the file of this court. |

Respondent's Witness & Exhibits :- Nil

Court Witness Examined :- Nil

Court Exhibits Marked:-

C1 25.07.2023 : Commission report submitted by
Kumari.Zisa mol, Advocate Commissioner.

Munsiff

Typed by : sivadsini.mk
Compared by :

Fair/Carbon Copy of
Order in IA. No.01/2023
(IA.1284/2023) in
O.S.No.231/2023
Dated: 20.01.2024

