

IN THE COURT OF THE MUNSIFF OF ALATHUR

Present:- Sri.K.Sidhik, Munsiff

Thursday, 24nd day of September, 2020
(2nd day of Aswina, 1942 S.E)

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INTERLOCUTORY APPLICATION No.01/2020 (1184/2020)

IN

ORIGINAL SUIT No.249/2020

Chithrasenan, Aged 45 years, S/o (Late)
Velayudhan, Residing at Kodilpadath,
Erattakulam P.O, Kavassery Amsom Desom,
Alathur Taluk.

}
Petitioner/
Plaintiff

Vs.

1. Preetha, Aged 44 years, W/o Jayaprakash,
Residing at Kodilpadath, Erattakulam P.O,
Kavassery Amsom Desom, Alathur Taluk.

2. Jayaprakash, Aged 49 years, S/o (Late)
Velayudhan, Residing at Kodilpadath,
Erattakulam P.O, Kavassery Amsom Desom,
Alathur Taluk.

3. Haridasan, Aged 47 years, S/o (Late)
Velayudhan, Residing at Kodilpadath,
Erattakulam P.O, Kavassery Amsom Desom,
Alathur Taluk.

}
Respondents/
Defendants

This petition is coming on this day for final hearing before me in the presence of Sri. M. Raveendran, Advocate for petitioner and Sri.K.K.Appukuttan, Advocate for respondents and this court passed the following.

ORDER

Petitioner filed the petition under Order XXXIX Rule 1, 2 and Section 151 of the Code of Civil Procedure.

2. Petition averments in short are as follows:-

Items No.1 and 2 of the petition 'A' schedule property belongs to the petitioner by virtue of a gift deed bearing No.4837/2011 of SRO, Alathur and partition deed bearing No.2642/2002 of SRO, Alathur. One Velayudhan is the father of petitioner and respondents 2 and 3. First respondent is the wife of second respondent. Petition 'B' schedule property is the property assigned by father Velayudhan to first respondent. Velayudhan is no more. The deceased Velayudhan gifted item No.1 in petition 'A' schedule property. A way was provided on it's farther western side of the said property. The said way is the petition 'C' schedule property. The said pathway is lying on the eastern side of first respondent's property. There is no boundary to separate first respondent's property from petition 'C' schedule property. Petition 'C' schedule property is the only access to item No.2 in petition 'A' schedule property. Over the petition 'C' schedule property the petitioner has perfected his right and

title by virtue of right of easement by grant. Now the respondents are causing obstruction to the petitioner in the enjoyment of petition 'C' schedule property by putting sand sacks through out the petition 'C' schedule property. Hence the suit was filed. This application for temporary prohibitory injunction restraining the respondents and their men from causing any obstruction to the petitioner and his men in the enjoyment of petition 'C' schedule property as an access to item No.2 in petition 'A' schedule property.

3. Respondents filed counter contenting as follows :-

The right and title over the petition 'A' schedule property has to be proved by the petitioner before the court. Father Velayudhan had not provided any pathway on the western side of his remaining property as pleaded in the petition. Father Velayudhan had provided a pathway which commences from southern panchayat road and ends at petition 'B' schedule property owned by first respondent. The said pathway does not continue into northern side up to item No.2 in petition 'A' schedule property through the eastern side of petition 'B' schedule property as claimed by the petitioner. There is no pathway on the eastern side of the petition 'B' schedule property. Eastern side of the petition 'B' schedule property is the remaining property of father Velayudhan. It is not correct to say that petition 'C' schedule property is the only access to item No.2 in

petition 'A' schedule property. Petition 'C' schedule property is not in existence as claimed by the petitioner. It is not correct to say that these respondents had caused obstruction to the petitioner by putting sand sacks in the petition 'C' schedule property. For the said reasons IA is liable to be dismissed.

4. The following points arise for consideration :

1. Whether the petitioner has made out prima facie case and balance of convenience in his favour ?

2. Reliefs and order ?

5. From the side of petitioner exhibits A1 to A6, C1 and C1(a) were marked. Exhibit B1 was marked from the side of respondents.

6. Heard.

7. Point No.1 :- Petitioner, respondents 2 and 3 are brothers. First respondent is the wife of second respondent. One Velayudhan was the father of petitioner and defendants 2 and

3. Said Velayudhan is no more. Exhibit A4 is the death certificate of deceased Velayudhan. Wife of Velayudhan name Vesu is also no more. Exhibits A5 is the death certificate of Vesu. Velayudhan had once owned and possessed 52 cents of property which is lying on the north side of a panchayat road. Deceased Velayudhan purchased the said 52 cents of property from his brother Chandran by virtue of exhibit A1 sale deed

bearing No.1651/1976. Item No.1 in petition 'A' schedule property, petition 'B' schedule property and petition 'C' schedule pathway were once part and parcel of said 52 cents of property covered by exhibit A1 sale deed. Pertaining to these aspects there is no contention from the side of the respondents.

8. Exhibit A2 is a Will admittedly executed by deceased Velayudhan in favour of petitioner and third respondent. In exhibit A2 altogether there were two items of property. Pertaining to item No.1 in exhibit A2 Will admittedly deceased Velayudhan had subsequently executed a gift deed in favour of third respondent. Pertaining to item No.2 in exhibit A2 Will, deceased Velayudhan had subsequently executed a gift deed in favour of the petitioner. The gift deed admittedly executed by deceased Velayudhan in favour of petitioner is the exhibit A3 document bearing No.4837/2011. Exhibit A3 gift deed covers item No.2 properly in exhibit A2 Will and some more extents. Admittedly, the property covered by exhibit A3 gift deed has been mentioned as item No.1 in petition 'A' schedule property. Exhibit A6 is a partition deed executed by petitioner and his brother Mani. By virtue of exhibit A6 partition deed, petition 'B' schedule therein was allotted to the petitioner and the said property has been mentioned as item No.2 in petition 'A' schedule property. Item No.2 in petition 'A' schedule property was not a part and parcel of property owned and possessed by

deceased Velayudhan by virtue of exhibit A1 sale deed.

9. Deceased Velayudhan had admittedly sold 5 cents of property lying abutting to southern panchayat road to his son Radhakrishnan and the latter had admittedly assigned the said property to one Nazar. Deceased Velayudhan had assigned 5 cents of property to his son Mani. The property assigned to Mani is also lying abutting to the southern panchayat road. Subsequently deceased Velayudhan had sold 5 cents of property to first respondent by virtue of exhibit B1 sale deed bearing No.4100/2004. The property assigned to first respondent is lying on the immediate northern side of Nazar's property. On perusal of exhibit B1 sale deed it would reveal that deceased Velayudhan had assigned the right for the usage of one way, which commences from southern panchayat and lying in north – southern direction, to first respondent. The said pathway is lying in north – south direction in between property of Nazar and Mani. According to the petitioner, the said 6feet pathway commences from southern Panchayat road and passes through the eastern side of first respondent's property and finally reaches at item No.2 in petition 'A' schedule property. The said way commences from southern panchayat road and allegedly reaches at item No.2 in petition 'A' schedule property has been mentioned as petition 'C' schedule property. According to the petitioner, petition 'C' schedule property is the only access to item No.2 in petition 'A'

schedule property. It is the further case of the petitioner that he has perfected his right over the petition 'C' schedule pathway by virtue of right of easement by grant.

10. In Exhibits C1 and C1(a) report and plan Advocate Commissioner has very well reported and marked the lying and existence of alleged petition 'C' schedule property. The apprehension of the petitioner is that respondents are trying to encroach upon the portion of petition 'C' schedule property which is passing through the eastern side of petition 'B' schedule property by putting sand sacks through out the property. In exhibit C1 and C1(a) report and plan Advocate Commissioner has very well noted the fact that some sand sacks were seen to have arranged through the western part of the petition 'C' schedule property. The photographs produced by the Advocate Commissioner also would show that some sand sacks were seen to have put through the petition 'C' schedule property.

11. According to the respondents, petition 'C' schedule property is not in existence. Respondents admitted the fact that a pathway commences from southern panchayat road and passes in between property of Nazar and Mani and reaches at petition 'B' schedule property. It is the case of the respondents that the said panchayat way ends at petition 'B' schedule property and that it does not continue up to the item No.2 in petition 'A' schedule property as pleaded in the petition. According to the respondents,

no pathway is passing through the eastern side of petition 'B' schedule property as pleaded in the petition. The case put forwarded by the respondents would show that the eastern side of the petition 'C' schedule property is the remaining property of deceased Velayudhan. But on the other hand, petitioner alleged that in between the petition 'B' schedule property and remaining property of the deceased Velayudhan a piece of land is lying as a pathway in continuation of way provided by deceased Velayudhan in exhibit B1 sale deed and the said way reaches up to item No.2 in petition 'A' schedule property.

12. To substantiate the contention taken by the respondents, counsel for the respondents drew the attention of the court into exhibit B1 sale deed stands in favour of first respondent pertaining to petition 'B' schedule property admittedly executed by deceased Velayudhan. According to the respondents, the eastern boundary of exhibit B1 document has been mentioned as property of Velayudhan. According to the counsel for the respondents, the said description on the eastern boundary of the exhibit B1 document definitely shows that no pathway is lying on the eastern side of petition 'C' schedule property. It is true that eastern boundary of the exhibit B1 document has been mentioned as property of Velayudhan. It prompted the respondents to took a contention that there is no way lying in between petition 'B' schedule property and Velayudhan's property. At this juncture

exhibit A3 gift deed executed by deceased Velayudhan in favour of petitioner has got some significance. Exhibit A3 is, as I have already mentioned, with respect to item No.1 in petition 'A' schedule property. A close look at exhibit C1(a) plan submitted by the Advocate Commissioner, it would reveal that in between item No.1 in that 'A' schedule property and petition 'B' schedule property the remaining property of deceased Velayudhan is lying. The said remaining property of deceased Velayudhan is lying on the western side of item No.1 in petition 'A' schedule property. A close look at western boundary of exhibit A3 gift deed executed by deceased Velayudhan in 2011 would definitely show that western property of item No.1 in petition 'A' schedule property is the remaining property of Velayudhan and a way. So there is substance in the case advanced by the petitioner that deceased Velayudhan had provided a way on the eastern side of petition 'B' schedule property. Then counsel for the respondents submitted that if deceased Velayudhan had provided the way on the eastern side of petition 'B' schedule property the said pathway would have been mentioned in the eastern boundary column of exhibit B1 sale deed executed by deceased Velayudhan in 2004. On perusal of exhibit B1 sale deed it would reveal that in 2004 the pathway was not provided on the eastern side of petition 'B' schedule property. But what can be gathered from a conjoint reading of exhibits B1 and A3 documents is that after 2004

deceased Velayudhan has provided a piece of land through his property as a pathway and the same is passing through the eastern side of the petition 'B' schedule property. If deceased Velayudhan had not provided a pathway through his remaining property in north south direction in continuation of pathway commences from southern panchayat road, it would not have been mentioned in the western boundary column of exhibit A3 document as remaining property of Velayudhan and a plot provided for way. So it can be safely be concluded that exhibit A3 document specifically shows the existence of part of petition 'C' schedule property through the eastern side of the petition 'B' schedule property.

13. From the aforesaid discussions it can be said that by virtue of exhibits A1 to A3, A6, C1 and C1(a) report and plan the petitioner has proved a prima facie case in his favour. The Advocate Commissioner has specifically reported that petition 'C' schedule pathway is the only access to item No.2 in petition 'A' schedule property. In such instance if the respondents are permitted to cause obstruction to the petitioner in the enjoyment of petition 'C' schedule property, irreparable injury will be caused to the petitioner and his men. The balance of convenience is also in favour of the petitioner. Hence the petitioner is entitled to get an ad-interim temporary injunction order as prayed for. Accordingly this point is answered in favour of the petitioner.

14. Point No.2 :- In the light of the findings under point No.1, the petition is allowed and the ad-interim injunction is made absolute as follows :

i. The respondents and their men shall not cause any obstruction to the petitioner and his men in the peaceful enjoyment of the petition 'C' schedule property until further orders.

Dictated to Confidential Assistant, transcribed and typed by him, corrected and pronounced by me in open court on this the 24th day of September, 2020.

Munsiff

APPENDIX :-

Petitioner's Witness Examined :- NIL

Petitioner's Exhibits Marked :-

- | | | | |
|----|------------|---|---|
| A1 | 28.04.1976 | : | Certified copy of Deed No.1651 of SRO, Alathur in the name of Velayudhan. |
| A2 | 27.10.2004 | : | Will executed by Velayudhan. |
| A3 | 28.10.2011 | : | Gift Deed No.4837/I/2011 in the name of Chithrasenan by Velayudhan. |
| A4 | 16.03.2012 | : | Death Certificate issued by Thrissur Corporation in the name of Velayudhan. |

- A5 03.10.2011 : Death Certificate issued by Kavassery Gramapanchayath in the name of Veshu, W/o Velayudhan.
- A6 12.09.2002 : Photocopy of Partition Deed between Chithrasenan and Mani of SRO, Alathur

Respondents Witness Examined :- NIL

Respondents Exhibits Marked :-

- B1 07.10.2004 : Jenmama Assignment Deed No.4100/2004 of SRO., Alathur executed by Velayuhan in favour of Preetha.

Court Witness Examined :- NIL

Court Exhibits Marked :-

- C1 03.09.2020 : Commission Report Submitted by Sri.Jibi.B, Advocate Commissioner.
- C1(a)08.09.2020 : Rough plan prepared and submitted by Sri.Jibi.B, Advocate Commissioner.

Munsiff

Fair/Copy of Order
in IA.01/2020(IA1184/2020)
in O.S.249/2020
Dated: 24. 09. 2020