

IN THE COURT OF THE MUNSIF, ADOOR

Present: Smt. Jaya Prabhu, B.A, LL.B., Munsiff

Wednesday the 30th July, 2014/8th Sravana 1936 SE

O.S. 411/2011

Between:

1. Jose Pappachan, aged 57 years,
Gelad Bhavan, Karuvatta muri,
Peringanadu village,
Adoor taluk.

2. Sosamma Jose, aged 54 years,
W/o. Jose Pappachan,
do- do-

... Plaintiffs.

And:

1. State of Kerala represented by
The District Collector,
Collectorate, Pathanamthitta.

2. Tahsildar, Taluk Office,
Adoor.

3. Resurvey superintendent,
Re-survey superintendent Office,
Revenue tower, Adoor.

... Defendants.

This suit having been finally heard on 16.7.2014 in the presence of

Sri.P.C. Varghese Muthalaly counsel for the plaintiffs and Sri. Alexander Philip counsel for the defendants and having stood over for consideration on 30.7.2014 the court delivered the following:

JUDGMENT

Suit for declaration and permanent prohibitory injunction.

2. Plaintiff averments in brief is as follows: Plaintiff schedule property having an extent of 30 cents was obtained by the 1st plaintiff from Lali Rajan D/o Michael and plaintiff is in possession and enjoyment of the same. The predecessor of the plaintiff Lali Rajan has obtained the said property by virtue of Settlement Deed No.1426/1988 and she was in possession and enjoyment of the same. The predecessor of Lali Rajan has obtained the said property by virtue of Settlement deed No.2637/1983 and he was in possession and enjoyment of the same. Out of the said properties after purchasing the property by the 1st plaintiff in the year 1993 a building was constructed therein. There is no dry land in the plaintiff schedule property by way of reclaiming the wetland the plaintiff has constructed a building therein and from the last more than 100 years the plaintiff and predecessors were in possession and enjoyment of the said property. Apart from the plaintiff no other person have any manner of right over the plaintiff schedule property. At the time of obtaining permit for the construction of

building in the plaint schedule property the boundaries and the property in possession of the plaintiff was convinced by the authorities and issued permit for construction. In the year 1995 when the plaintiff has approached the revenue authorities for paying tax to the plaint schedule property it was revealed that as per the resurvey the plaint schedule property is not in the name of the plaintiff. The plaintiff has filed several complaints before the resurvey authorities but no action was taken them. Thereafter the plaintiff has filed complaint before the Chief Ministers Redressal Forum and in the same the enquiry was conducted and it was found that the property of the plaintiff is included as sarkar puramboke as per the village records. The plaint schedule property is in the absolute ownership and possession of the plaintiff and predecessors. In these circumstances the plaintiff has sought for declaration of title over the plaint schedule property. Since as per the resurvey records the plaint schedule property is shown as a sarkar puramboke there is every chance to assign the same in favour of third parties. The defendants are trying to assign the same in favour of the 3rd defendant. The defendants have no manner of right to do so. The plaintiffs have not trespassed into the plaint schedule property. At any point of time the plaint schedule property was a

puramboke land. The plaint schedule property was in possession and enjoyment of the plaintiff and predecessors from the last several years. The plaintiff is not in a position to obstruct the above said act of the plaintiff. Thus the plaintiff has filed this suit for declaration of title over the plaint schedule property and a permanent prohibitory injunction restraining the defendants and their men and agents from trespassing into the plaint schedule property and forcefully evicting the plaintiff from therein and inducting third parties to the plaint schedule property.

3. Defendants filed written statement and contended that the suit is not maintainable either in law or on facts. The 1st plaintiff has filed an application for assignment of land in favour of him and upon enquiry with regard to the same, it was found that 8.09 Ares of property in Peringanadu village comprising in resurvey 65/2, Block No.10 is not liable for assignment. Since the plaintiff's family is having an extent of 30.50 Ares of property in resurvey 66/6 of Block No.10 and the property applied for assignment is in adjacent to the same. Thus the said application for the plaintiff was not consider. It is not possible to assign puramboke property to anybody in violation of the Rules under Kerala Land Assignment Act. Apart from that if the person is in possession of excess property than the

ceiling limit the land cannot be assigned in favour of such person as per the said act. Moreover as per the G.O.(MS) 280/11 RD dated 27.7.2011, the plaintiffs are not entitled to get assignment of property. 15.90 Ares of property in resurvey 65/2 Block No.10 is sarkar puramboke and the plaintiffs have no manner of right over the same. The property of the 1st plaintiff's son is situated in resurvey 66/6 having an extent of 30.50 Ares and it is having thandaper No.4245. The plaintiff has no cause of action against the defendant. Thus the plaintiff is entitled to get a declaration and permanent prohibitory injunction as prayed for.

4. Issues for consideration are as follows:

(i) Whether the plaintiff is entitled to get a decree for declaration as prayed for?

(ii) Whether the plaintiff is entitled to get a decree for permanent prohibitory injunction as prayed for?

(iii) Reliefs and cost?

5. From the side of the plaintiff Pw1 to 5 examined Ext.A1 to A11, C1, C1(a) C1(b) marked. From the side of the defendants no oral evidence adduced. Ext.B1 to B5 marked. Heard both sides.

6. Issue No.(i) and (ii) . Plaintiff has sought for a declaration of title

over the plaint schedule property and a permanent prohibitory injunction restraining the defendants and their men from trespassing into the plaint schedule property and forcefully evicting the plaintiff from therein and inducting third parties to plaint schedule property and committing any act of waste upon therein.

7. The definite case of the plaintiff is that the plaintiff is the absolute owner in possession and enjoyment of the plaint schedule property which was obtained by him by virtue of Ext.A1 document No.1789/93. Pw1 produced Ext.A2 and A3 to show that the mutation of the plaint schedule property was effected in the name of the 1st plaintiff. Ext.A2 and A3 is the tax receipt pertaining to the plaint schedule property. On the basis of Ext.A1 to A4 it can be seen that the plaintiff is in possession and enjoyment of the plaint schedule property. Ext.A4 is the demand notice pertaining to the building tax for the building in the plaint schedule property. Ext A5 is the building tax receipt pertaining to the plaint schedule property. Ext.A6 is the title deed in favour of Abraham who is the father of predecessor of the plaintiff. Ext.A7 is the prior deed of the plaintiff. Pw1 categorically deposed before the court that after obtaining building permit from the municipality the plaintiff has constructed a residential building in the plaint schedule

property. Ext.A8 is the reply notice. According to Pw1 the property covered by Ext.A6 and A7 are situated one and the same survey number and the extent of the same is 30 cents. The 1st plaintiff has approached the village office for remitting tax then only the plaintiff got knowledge that as per the resurvey the plaint schedule property is sarkar puramboke. The plaintiff was directed to file application for assigning the plaint schedule property in his favour and on the said application the defendant stated that it is not possible to assign in favour of the plaintiff. Thus the plaintiff filed complaint before the resurvey authorities. The authority has convinced with the plaintiff that in order to get assignment of the plaint schedule property which is in possession and enjoyment of the plaintiff an application has to be filed before the revenue authorities for assignment of the land. In the said application Ext.A8 reply was issued stating that it is not possible to assign the sarkar puramboke in favour of the plaintiff. In order to change the category of the property which is the registered holding of the plaintiff. The plaintiff has filed application before the resurvey Superintendent but no action by them. Thus the plaintiff has filed complaint before the Chief Ministers Redressal Forum and Ext.A9 reply was issued by the defendant. So far the plaintiff has not obtained any

authorities with regard to the same. Due to the mistake committed by the government officials the property was included as sarkar puramboke in the resurvey plan and resurvey records. Thus the plaintiff prays for declaration of title over the plaint schedule property. Ext.A10 is the puramboke register and Ext.A11 is the BTR pertaining to the plaint schedule property. Since the defendants have no manner of right to forcefully evict the plaintiff from the plaint schedule property. The plaintiff prays for a permanent prohibitory injunction in this regard.

8. For the purpose of measurement of the plaint schedule property the plaintiff has taken out a commission. Ext.C1, C1(a) c1(b) is the commission report, mahazar and plan. As per Ext.C1, C1(a) C1(b) the commissioner has reported that the father of the predecessors of the plaintiff Abraham has obtained property in old survey 60/16/3B/32. Since the co-relation register and mahazar and sketch was not available it was not possible to identify the said property as per the old survey records. As per the resurvey the property of the 1st plaintiff is situated in resurvey 262/05 Block No.2 of Peringanadu village. As per the BTR the corresponding survey number 60/2 old survey No.73/3/1 and out of that an extent of 15.90 Ares is sarkar puramboke. It was further reported by the commissioner that 30 cents of

property in survey 65/2 in Block No.10 is in possession and enjoyment of the plaintiff and the plaintiff is residing therein, after constructing a residential building therein. The said property is clearly separated from other properties and it was shown in the C1 (b) plan with letters 'FGHIJKF' and it is having an extent of 12.15 Ares. On the northern side of the said property situates a public road and eastern and southern side situates the water channel and western side situates a thiddle and boundary wall adjacent to the same on the northern boundary.. There is no boundary on the eastern and western side the house situated the property is having an age of around 20 years. The property on the western side of the plaint schedule property is the property in possession of the plaintiff but it is situated in another survey sub division and it is having 2.51 Ares and it is shown in C1(b) plan with letters 'IHLMNEOI'. The commissioner was examined as Pw2 and he deposed in tune with Ext.C1, C1(a) C1(b). He further deposed before the court that the eluka property as per the title deed and present lie and nature of the property is one and the same.

9. Pw3 is the Tahasildar and according to her as per Ext.A8 the 1st plaintiff has filed application to assign the property in survey 65/2 in favour of him. Since the said property is a puramboke land and it is not possible to assign

the same in favour of the plaintiff but she was directed to take steps to rectify the error in the resurvey. She categorically deposed before the court that Ext.A10 there is no remarks in survey No.65/2. According to her, the said property is a puramboke land. According to her also plaint schedule property covered by resurvey 65/2. She further stated that the corresponding old survey number of resurvey 65/2 is 73/3/1 and it is a puramboke land. She stated that there may be mistake in the resurvey of the property. Since in the description of property covered by Ext,A1 the old survey 60/16/3B/32. Since the property in possession of plaintiff as per Ext.A8 situated in 2 survey numbers for the purpose of changing the item the plaintiff was permitted to file application because if there is any mistake in the resurvey it can be corrected by way of changing the item of property.

10. Pw4 is the brother of predecessor of plaintiff and according to him the property covered by Ext,A1, A6 and A7 are one and the same property. After alienating the property covered by Ext.A1 document the remaining seven cents of property is in possession of Laly Rajan.

11. Pw5 is the surveyor who prepared Ext.C1 (b) plan and according to him the property obtained by the Michael as per Settlement deed No.2637/83 is shown in the plan with letters 'FGHIJKF' and it is having an extent of 30 cents and it is in resurvey 65/2. The said property was obtained by Laly

Rajan as per document No.1426/88 and subsequently it was obtained by the plaintiff. According to her, the resurvey 65/2 is co-related to the old survey No.60/16/3B but as per the puramboke register in resurvey 65/2 is shown as old survey 73. She further stated that she is not in a position to stay that whether i.e. the error in the resurvey or not. As per the plan and the tax receipt of the property the old survey number of the property is 60/16/3B/32 but the property in the possession of the plaintiff is in survey 65/2. The defendant has not adduced any oral evidence. Ext.B1 to B5 marked from the side of the defendant. Ext.B1 is the BTR and B2 is the puramboke register. Ext.B3 is the resurvey plan and B4 is the reply issued to 2nd plaintiff and B5 is the application submitted by the 2nd plaintiff for assignment of property covered by 65/2.

12. The evidence on record shows that it is the definite case of the plaintiff that the plaintiff is the absolute owner in possession and enjoyment of the plaint schedule property which was obtained by him by virtue of Ext.A1 document. Ext.A6 and A7 are the prior deeds of the plaint schedule property. Ext.A6 and A7 shows that the property situated in survey 60/16/3B/32. A6 shows that the property covered by the said document situated in old survey 60/16/3B/32. As per Ext.A1 it can be seen that the

property obtained by the 1st plaintiff as per the same situated in survey 60/16/3B. As per Ext.A2 tax receipt it can be seen that the plaintiff has paid tax for the property in the year 1984. Ext.A3 also shows that the plaintiff has paid tax for the property covered by survey 74/4 and 60.16/3B/32. As per Ext.A11 BTR it can be seen that in old survey 73/3/1 resurvey 65/2 situated puramboke land having an extent of 15.90 Ares. As per Ext.A10 puramboke register it can be seen that though after serial No. 43 the survey 65/2 was included and the extent of the same which shown as 15.90 but there is no description of the property in the remarks column. Moreover there is no serial number for the same Pw1 categorically deposed before the court that in the year 1995 when the plaintiff approached the revenue authorities for paying tax they have stated that as per the resurvey the plaintiffs have no property and property in possession of the plaintiff is a sarkar puramboke. Thus the plaintiff has filed application before the authorities and it was come out in evidence also there is no dispute with regard to the title deed of the plaintiff. Ext.A1 and its prior deeds Ext.A6 and A7. According to the plaintiff, as per the resurvey he has lost his property. The defendant on the other hand contended that the plaintiffs have no property in survey 65/2 and survey 65/2 is co-related to

the old survey 73/3/1. There is no co-relation register or any piece of document is produced before the court to substantiate that the survey No.65/2 is co-related to survey 73/1. Though the Ext.A11 BTR register shows that an extent of 15.90 Ares of property in survey 65/2 in old survey 73/1 is sarkar puramboke. Apart from Ext.A11 nothing before this court to substantiate the same . It is pertinent to note that Ext.A10 puramboke register the other survey 65/2 is included and the extent of the same is 15.90 Ares. There is no description with regard to the said property in the remarks column. The Pw1 categorically contended that it was fraudulently entered into the said register by the authorities concerned. At the time of examination of Pw3 she has no explanation with regard to the same also. As per the evidence of Pw2 commissioner and Pw5 surveyor coupled with Ext.C1, C1(a) C1(b) it can be seen that the plaintiff is in possession and enjoyment of the plaint schedule property which is situated in survey 65/2. Both Pw1 and 5 categorically deposed before the court that the eluka of the title deed of the plaintiff and the present eluka of the property in possession of the plaintiff is one and the same and thus the commissioner and surveyor has located the plaint schedule property. The defendant categorically contended that the resurvey number of the plaint schedule

property is not 65/2 and 65/2 is a sarkar puramboke land . At the very same time the defendant admitted that the plaintiff and his family and their predecessors were residing in the said property from the last several years. Though the defendant counsel contended that by way of including the puramboke property the title deed of the plaintiff and predecessor was created by the father of the predecessor of 1st plaintiff. Apart from the said suggestion there is nothing before this court to substantiate the same. The evidence adduced by Pw1 shows that prior to resurvey the plaintiff was paying tax for the plaint schedule property and only when the resurvey was come into force the plaintiff has lost to his property as per the resurvey records. Since the plaintiff has established his title over the property covered by Ext.A1 document and it was come out in evidence through Ext.C1 (b) that the plaintiff is in possession and enjoyment of the 'FGHIJKF' plot shown in Ext.C1 (b) plan having an extent of 12.15 Ares situated in resurvey 65/2 and the eluka of the said property is tally with the title deed of plaintiff. That shows that there is error in resurvey. Thus the plaintiff is entitled to get declaration with respect to his title on the basis of Ext.A1. Only the because of the reasons that as per Ext. A10 the property covered by resurvey 65/2 is sarkar puramboke. The title of the plaintiff over the

property covered by Ext.A1 cannot be denied on the sole basis of the same. Moreover it is settled position of law that the resurvey records will not confer title. The plaintiff is claiming declaration of title on the basis of Ext.A1 and plaintiff proved his title as per Ext.A1 thus the plaintiff has successfully established his title over Ext.A1 document and it was come out in evidence the plaintiff is in possession and enjoyment of 'FGHIJKF' plot as per Ext.C1(b) plan. The plaintiff is entitled to get a declaration as prayed for.

13. The case of the plaintiff is that on the basis of claiming that the plaint schedule property is sarkar puramboke and plaintiff has trespassed into the same the defendant has trying to forcefully evicting the plaintiff from the plaint schedule property and inducting 3rd parties therein. The very nature of contention of the defendant in the written statement itself that the plaintiffs have no property in survey 65/2 and it is a sarkar puramboke land itself shows that the apprehension spoken by the plaintiff that the defendant is trying to forcefully evict the plaintiff from the plaint schedule property is well founded. It is pertinent to note that even though the defendants contended that the plaintiff is in possession of sarkar property, so far no steps was taken by the defendant to evict the plaintiff. It was

come out in evidence that the house situated in the plaint schedule property is having age around 20 years and it was come out in evidence that even prior to that the plaintiff and predecessors were in possession and enjoyment of the plaint schedule property from the last several years. Thus the materials on records shows that the plaintiff has proved a valid cause of action against the defendant. Hence the issues are found in favour of the plaintiff.

14. Issue No. (iii): Reliefs and cost: In the result, suit decreed as follows:

(i) Plaintiff is entitled to get a decree for declaration of title over the 'FGHIJKF' plot shown in Ext.C1(b) plan on the basis of Ext.A1 document.

Ext.C1, C1(a) C1(b) do form part of the decree.

(ii) Defendants and their men and agents are hereby restrained by way of permanent prohibitory injunction from trespassing into the plaint schedule property and forcefully evicting the plaintiff from

the 'FaHIJKF' plot in C1(b) and inducting third parties therein.

(ii) Defendants shall pay cost also.

Dictated to the Confidential Assistant, transcribed and typed by her corrected and pronounced by me in open court on this 30th day of July 2014.

Jaya Prabhu,
Munsiff.

Appendix:

Exhibits marked for the plaintiffs:

- A1 15.6.1993 Sale deed No. 1789/93 executed by Lali Rajan in favour of Jose of SRO, Adoor.
- A2 11.1.1994 Land tax receipt No. 83 issued by Village Office, Peringanadu.
- A3 17.2.1994 Land Tax receipt No. 66 issued by Village Office, Peringanadu.
- A4 24.11.1994 Demand notice issued by Municipality, Adoor.
- A5 19.3.2014 Building tax receipt No. 11803 issued by Municipality, Adoor.
- A6 9.6.1988 Settlement deed No. 1426/1988 executed by Michayel in favour of Lali Rajan of SRO, Adoor.
- A7 1.8.1983 Certified copy of settlement deed No. 2637/83 of SRO, Adoor.

A8 16.11.2004 Reply notice No. DC/19373/04/LDs issued by Taluk office, Adoor.

A9 7.3.2011 Reply No.12039 of Chief Ministers Redressal Forum to Sosamma Jose.

A10 2.8.2013 Copy of the extract of puramboke register issued by Village Officer, Peringanadu.

A11 7.8.2013 Copy of Base tax register issued by Village office, Peringanadu.

Exhibits marked for the defendants:

B1 18.6.2014 Copy of Base tax register issued by Village office, Peringanadu.

B2 12.6.2014 Copy of puramboke register issued by Additional Tahsildar, Adoor.

B3 18.6.2014 Copy of re-survey plan in respect of field No. 65 issued by Village office, Peringanadu.

B4 10.11.2011 Copy of reply No. C4-20295/11/KDG issued by Additional Tahsildar, Adoor.

B5 15.5.2011 Copy of application by Sosamma Jose issued by Additional Tahsildar, Adoor.

Court exhibits marked:

C1 7.10.2013 Report prepared and submitted by Sri.A. Ashok kumar, commissioner Advocate.

C1(a) 4.10.2013 Mahazer of do- do-

C1(b) 4.10.2013 Survey plan prepared by Smt. Sali Bai.D, court
surveyor and submitted by A. Ashok Kumar, Commissioner
Advocate.

Witness examined for the plaintiffs

PW1 9.6.2014 Sosamma Jose.

PW2 10.6.2014 Adv. Ashok kumar.

PW3 16.6.2014 Sulekha Beevi (Tahsildar)

PW4 17.6.2014 Joji Michayel.

PW5 18.6.2014 Sali Bai.D. (Surveyor)

Witness examined for the defendants: Nil.

Munsiff.

Td. by K. Divakaran,
Cd. by: