

IN THE COURT OF THE MUNSIFF, THIRUVALLA.

Present: Sri. Aravind S.J, Munsiff

Wednesday the 25th day of September, 2024

03rd Aswina, 1946 S.E.

OS No.211/2016.

Between:

- 1) P.V.Saramma, aged 69 years,
D/o.Late.Varghese,
Chalummattel Padinjarekkuttu Veettil,
Nooronmavu P.O, Anikkadu Muri,
Anikkadu Village, Mallappally Taluk.
Present address: P.V.Saramma,
W/o.Late.C.G.Kuruppu, 15/3 HAL Colony,
Harjindh Nagar P.O, Kanpoor,208007.
- 2) Biju Kuruppu, aged 38 years,
S/o.Late.C.G.Kuruppu,
Chalummattel Padinjarekkuttu Veettil,
Nooronmavu P.O, Anikkadu Muri,
Anikkadu Village, Mallappally Taluk.

Plaintiffs

(By Adv.Shaji Mathew George & Adv.V.A.Joseph.)

And:

- 1) Government of Kerala represented by
District Collector, Pathanamthitta.
- 2) Superintendent of Survey and Land Records,
Resurvey No.II, Pathanamthitta.
- 3) Tahsildar, Mallappally Taluk,
Mallappally, Pathanamthitta.

Defendants

- 4) Thomas Varughese, aged 50 years,
S/o.Late Varughese,
Chalummattel Padinjarekkuttu Veettil,
Nooronmavu P.O, Anikkadu Muri,
Anikkadu Village, Mallappally Taluk.
 - 5) P.V.Mathai, aged 66 years, S/o.Late.Varughese,
Chalummattel Padinjarekkuttu Veettil,
Nooronmavu P.O, Anikkadu Muri,
Anikkadu Village, Mallappally Taluk.
 - 6) P.V.Varughese, aged 59 years,
S/o.Late Varughese,
Chalummattel Padinjarekkuttu Veettil,
Nooronmavu P.O, Anikkadu Muri,
Anikkadu Village, Mallappally Taluk.
 - 7) P.V.Annamma, aged 54 years, D/o.Late.Varughese,
Chalummattel Padinjarekkuttu Veettil,
Nooronmavu P.O, Anikkadu Muri,
Anikkadu Village, Mallappally Taluk.
Present address: P.V.Annamma,
W/o.P.C.Babu, Puthuparambil, Thalipparambu Taluk,
Irikkoor Village, Cheppankeri, Arabi P.O,
Kannur District.
 - 8) Akkamma Varughese, aged 51 years,
W/o.Monichan, Changachattu Veettil,
Mallappally West P.O, Mallappally Village,
Mallappally Taluk.
 - 9) Annamma Mathew, aged 49 years,
W/o.Late.P.V.Mathew, Chalummattel Veettil,
Nooronmavu P.O, Anikkadu Muri,
Anikkadu Village, Mallappally Taluk.
Present address: Annamma Mathew,
Vazhvely Vadakkethil Veedu, Vadavathur P.O,
Vijayapuram Village, Kottayam Taluk.
- Defendants

- 10) Tinu Mathew, aged 24 years, D/o.Late.P.V.Mathew,
Chalummattel Veettil,
Nooronmavu P.O, Anikkadu Muri,
Anikkadu Village, Mallappally Taluk.
Present address: Tinu Mathew,
Vazhvely Vadakkethil Veedu, Vadavathur P.O,
Vijayapuram Village, Kottayam Taluk
- 11) Minu Mathew, aged 20 years, D/o.Late.P.V.Mathew,
Chalummattel Veettil,
Nooronmavu P.O, Anikkadu Muri,
Anikkadu Village, Mallappally Taluk.
Present address: Minu Mathew,
Vazhvely Vadakkethil Veedu, Vadavathur P.O,
Vijayapuram Village, Kottayam Taluk.

Defendants

(By Adv.Bijoy Kuruvilla, Government Pleader for D1,D2 & D3.)
(By Adv.Bijo Thomas George for D5 & D7.) (D4 & D6 set exparte.)
(No Vakalath for D8, D9, D10 & D11.)

Counter Claim in OS.211/2016.

Between:

- 1) P.V.Mathai, aged 74 years, S/o.Late.Varughese,
Chalummattel Padinjarekkuttu Veettil,
Nooronmavu P.O, Anikkadu Muri,
Anikkadu Village, Mallappally Taluk,
Pin - 689589.
- 2) P.V.Annamma, aged 62 years, D/o.Late.Varughese,
Chalummattel Padinjarekkuttu Veettil,
Nooronmavu P.O, Anikkadu Muri,
Anikkadu Village, Mallappally Taluk.
Present address: P.V.Annamma,
W/o.P.C.Babu, Puthuparambil, Thalipparambu Taluk,
Irikkoor Village, Cheppankeri, Arabi P.O,
Kannur District.

Plaintiffs

(By Adv.Bijo Thomas George.)

And:

- 1) P.V.Saramma, aged 77 years,
D/o.Late.Varghese,
Chalummattel Padinjarekkuttu Veettil,
Nooronmavu P.O, Anikkadu Muri,
Anikkadu Village, Mallappally Taluk.
Present address: P.V.Saramma,
W/o.Late.C.G.Kuruppu, 15/3 HAL Colony,
Harjindh Nagar P.O, Kanpoor,208007.
- 2) Biju Kuruppu, aged 46 years,
S/o.Late.C.G.Kuruppu,
Chalummattel Padinjarekkuttu Veettil,
Nooronmavu P.O, Anikkadu Muri,
Anikkadu Village, Mallappally Taluk.
- 3) Government of Kerala represented by
District Collector, Pathanamthitta.
- 4) Superintendent of Survey and Land Records,
Resurvey No.II, Pathanamthitta.
- 5) Tahsildar, Mallappally Taluk,
Mallappally, Pathanamthitta.
- 6) Thomas Varughese, aged 58 years,
S/o.Late Varughese,
Chalummattel Padinjarekkuttu Veettil,
Nooronmavu P.O, Anikkadu Muri,
Anikkadu Village, Mallappally Taluk.
- 7) P.V.Varughese, aged 67 years,
S/o.Late Varughese,
Chalummattel Padinjarekkuttu Veettil,
Nooronmavu P.O, Anikkadu Muri,
Anikkadu Village, Mallappally Taluk.

Counter Claim Defendants

- 8) Akkamma Varughese, aged 59 years,
W/o.Monichan, Changachattu Veetil,
Mallappally West P.O, Mallappally Village,
Mallappally Taluk.
- 9) Annamma Mathew, aged 57 years,
W/o.P.V.Mathew,
Chalumattel Padinjarekkuttu Veetil,
Nooronmavu P.O, Anikkadu Muri,
Anikkadu Village, Mallappally Taluk.
Present address: Annamma Mathew,
Vazhuvelil Vadakkethil Veedu,
Vadavathoor P.O, Vijayapuram Village,
Kottayam Taluk.
- 10) Tinu Mathew, aged 32 years, D/o.P.V.Mathew,
Chalumattel Veetil,
Nooronmavu P.O, Anikkadu Muri,
Anikkadu Village, Mallappally Taluk.
Present address: Tinu Mathew,
Vazhuvelil Vadakkethil Veedu,
Vadavathoor P.O, Vijayapuram Village,
Kottayam Taluk.
- 11) Meenu Mathew, aged 28 years, D/o.P.V.Mathew,
Chalumattel Veetil,
Nooronmavu P.O, Anikkadu Muri,
Anikkadu Village, Mallappally Taluk.
Present address: Meenu Mathew,
Vazhuvelil Vadakkethil Veedu,
Vadavathoor P.O, Vijayapuram Village,
Kottayam Taluk.
- Counter Claim Defendants

(By Adv.V.A.Joseph & Adv.Shaji Mathew George for D1 & D2.)

(By Adv.Bijoy Kuvuvilla for D3, D4 & D5.)

(D6 & D7 set exparete.) (No Vakalath for D8, D9, D10 & D11.)

This Suit and Counter Claim having been finally heard on 31-07-2024 and stood over for consideration on 25-09-2024 and on the same day the court delivered the following:

J U D G M E N T

Suit is for Declaration of title, fixation of boundary, partition and permanent Injunction and counter claim is filed by Defendants 5 and 7 for declaration of title and permanent injunction.

2. Plaintiff averments in brief are stated as follows: - The properties inclusive of the plaint schedule properties having an extent of 98 cents in old survey No. 486/1 originally belonged to the parents of the 1st plaintiff and defendants 4 to 8, Sri. Varghese and Annamma by virtue of Sale Deed No. 772/112 M.E. The said properties are situated at either side of Unnipadi - Nooronmavu Panchayat road and was in their possession and enjoyment. The property at the eastern side of the said road is in resurvey No. 68/6 and has an extent of 18.40 Ares. The property at the western side of the said road in resy. No. 68/2 and has an extent of 17 Ares. The entire 18.40 ares of property is scheduled as item no 4. The said Varghese and Annamma executed Settlement deed No. 723/1996 with respect to a portion of the said properties whereby 10.93 ares of property out of 17 Ares of property at the western side of the road was allotted to the share of the 5th defendant and 6.07 Ares of property was settled in favour of one P.V. Sosamma. Similarly, 8.09 Ares of property out of 18.40 Ares of property at the eastern side of the Panchayat road was allotted to the share of the 1st plaintiff. The said 18.40 Ares of property is situated at the western side of the property of one Kizhakkathil George, at the northern side of the property of one Kaduthanam Kurien John. Southern side of the property of one Puthenparambil Eappen and at the eastern side of the panchayat road. The property obtained by the 1st plaintiff by virtue of the aforesaid deed is scheduled as item No. 1. After the execution of the said deed the 1st plaintiff executed settlement deed No. 664/2011 with respect to the plaint

schedule item No.1 property in favour of the 2nd plaintiff and thereafter he obtained title to the aforesaid property. The 2nd plaintiff approached Anikkadu Village Office for mutating the property in his name. Then he came to know that the plaint schedule item No.1 property which is at the eastern side of the panchayat road is shown in the Settlement deed as one to be in Resy. No. 68/2-1 and not in Resy. No. 68/6. On enquiry it is found that the same mistake had kept in Settlement deed No. 723/1996 also. The revenue officials have informed that the same could be rectified only by executing a rectification deed. However the executants of Settlement deed No. 723/1996 is not alive. The 4th defendant who is also a legal heir of the said persons is not willing to execute any Rectification deed with respect to the said property. Thereafter the plaintiff issued a notice under S. 80 CPC against the Government. The defendants did not file any reply within 60 days. Thereafter the 2nd defendant filed a reply on 06-01-2016 stating that the dispute could be resolved only through process of court. The 4th defendant misusing the opportunity that the plaintiffs are not in station is attempting to trespass into the plaint schedule item no 1 property and had instituted O.S. No. 213/2012 before this court for fixation of boundary and permanent injunction. He has no property adjacent to the plaint schedule item No. 1 property. The defendants are denying the title of the plaintiffs over the plaint schedule item No.1 property. The plaintiffs are also entitled to a decree of mandatory injunction directing defendants 1 to 3 to make necessary changes in the resurvey records. After the execution of deed No. 723/1996, the parents executed deed No. 900/1997 with respect to 2.83 Ares of property at the southern side of item No.1 property in favour of defendants 9 to 11. The said property is scheduled as item No.2. The remaining extent of property is scheduled as item No.3. The said item No.3 property still belongs to the parents and is thus

partiable. The 1st plaintiff is entitled to 1/7 share and defendants 4 to 8 are entitled to 1/7 share each and defendants 9 to 11 are together entitled to 1/7 share in the plaint schedule item No.3 property. Plaint schedule item No.3 property is partiable. The 1st plaintiff had sought for partition of the same. However the defendants 4 to 11 are not willing to do so. Hence the suit.

3. Summons was duly served on the defendants. Defendants 1 to 3 entered appearance and 3rd defendant filed written statement contending as follows:- The suit is not maintainable either under law or on facts. The plaintiff is put to proof regarding his title over plaint schedule item No. 1 property. Unnippadi - Nooronmavu panchayat road passes through the plaint schedule properties and the property at the eastern side of the said road is in resurvey no. 68/6 and the property having an extent of 17 Ares at the western side of the said road is in Resy. No. 68/2. The aforesaid road which is recorded as Bhoosthithi Vazhi is in resy. No. 68/4 and has an extent of .3620 Ares. As per the revenue records, the property in resy. No. 68/2 having an extent of 18.40 Ares belonged to the parents of the plaintiff and the plaint schedule item No. 1 property in Resy. No. 68/2-1 is now in the possession of the 1st plaintiff. However, the property belonging to the 1st plaintiff is one which is shown in the title deeds as to be in resurvey No. 68/6. As the resurvey number of the property was erroneous, the mutation could not be effected after execution of Sale deed No. 664/2011. On enquiry it is found that the resurvey numbers of the properties were interchanged and thus the plaintiff was asked to appear before the 3rd defendant to prefer an application. Thus the plaintiffs appeared before the 3rd defendant in the survey Adalath and had preferred a petition. The 3rd defendant had directed the plaintiff to execute a rectification deed. The resurvey records were prepared by the resurvey officials in correct and

proper manner. There is no cause of action to institute the suit against the defendants 1 to 3. Hence the suit is liable to be dismissed. The counsel for the 1st and 2nd defendant also filed memo adopting the contentions of the 3rd defendant.

4. The defendants 5 and 7 filed written statement contending as follows:- The suit is not maintainable either under law or on facts. The plaintiff is put to proof regarding his title over plaint schedule item No. 1 property. If the resurvey number of the property allotted to the 1st plaintiff is erroneous, he should have executed a rectification deed. The plaintiffs have so far no challenged the documents executed by the parents of the 1st plaintiff and defendants 5 and 7. The defendants 5 and 7 has not objected to the rectification of the resurvey number if it is found to be erroneous. These defendants are not a party in O.S. No. 213/2012. The defendants 5 and 7 are in possession of the properties obtained as per their title deed. It is admitted that the plaint schedule item No. 3 property is partible and that defendants 5 and 7 are also entitled to 1/7 share each in the property. The defendants are also paying a court fee for separation of their share in the property. There is no cause of action to institute the suit against these defendants. Hence the suit is liable to be dismissed.

5. The defendants 5 and 7 filed counter claim contending as follows:- The counter claim item No. 1 property belongs to the counter claim 1st plaintiff / 5th defendant by virtue of Settlement deed No. 723/1996 of the Mallappally SRO. The said property is in the absolute possession of the counter claim 1st plaintiff. The counter claim item No. 2 property belongs to the Counter claim 1st defendant/1st plaintiff by virtue of the aforesaid deed. The counter claim 1st defendant had executed deed No.

664/2011 in favour of counter claim 2nd defendant with respect to counter claim item No.2 property. When the counter claim 2nd defendant visited the village office to mutate the property, it is found that the resurvey number of the property is erroneously stated in the aforesaid Settlement deeds. Hence the counter claim defendants filed the present suit. The counter claim 1st plaintiff has paying tax for the property till 2023-2024. However, on close scrutiny it is found that the counter claim item No. 1 property is in resy. No. 68/2 and not in 68/1. As the counter claim 1st plaintiff was regularly paying tax, he did not notice the said regularity. It was only when the counter claim 1st plaintiff contacted the Advocate that he could notice the said discrepancy. Hence the counter claim plaintiff is entitled to declare that the counter claim schedule item No. 1 property is in resurvey No. 68/2 and a further direction to counter claim defendants 3 to 5 / defendants 1 to 3 to make necessary changes in the resurvey records. Hence the counter claim.

6. None of the counter claim defendants filed written statement to the counter claim.

7. Based on the aforesaid pleadings and contentions put forth by the parties, the following issues arose for consideration in the suit.

1. Whether the suit is maintainable?
2. Whether the plaintiff has title and possession over the plaint schedule item no 1 property?
3. Whether the plaintiff is entitled to get a declaratory relief as sought for?
4. What is the real resurvey number of plaint schedule item no 1 property?
5. Whether the plaintiff is entitled to the a declaration regarding resurvey number of plaint schedule item no 1 property?

6. Whether the plaintiff is entitled to get a decree of mandatory injunction as sought for?
7. Whether the plaintiff is entitled to get the boundary of plaint schedule item no 1, 2 and 3 fixed through the process of court?
8. Whether the plaint schedule item no 3 property is partible? If so, what is the share to be quantum of share?
9. Whether the plaintiff is entitled to get a decree of permanent prohibitory injunction?
10. Relief and costs?

8. The plaintiffs examined witnesses PW1 and Exts. A1 to A9 were marked. The 5th defendant was examined as DW1 and Ext B1 and B2 were marked. Commission report and survey plan dated 27-07-2023 were marked as Ext C1 and C1(a). Both sides were heard .

9. **Issue Nos. 1:** No party to the suit has argued on the question of maintainability. The case of the plaintiffs is that plaint schedule item no 1 property was obtained by the 1st plaintiff who later settled the same in favour of the 2nd plaintiff and that the resurvey number of the plaint schedule item no 1 property stated in the documents is erroneous. It is their case that there is mismatch between the boundaries and the resurvey numbers and the resurvey number is to be rectified. The suit is also filed for fixation of boundary and for permanent injunction. All the said reliefs would come within the ambit of s. 9 of the Code of Civil Procedure. Thus, this court is of the opinion that the suit is maintainable.

10. **Issue Nos. 2 to 6:** These issues are considered together for brevity and for the sake of convenience. It is the case of the plaintiffs that the plaint schedule item no 1 property was obtained by the 1st plaintiff by virtue of settlement deed no. 723/1996 of the Vennikulam SRO. The 1st

plaintiff had settled the property in favour of the 2nd plaintiff. The contention of the plaintiffs is that there occurred a mistake while stating the resurvey number of the properties in settlement deed no. 723/1996 and that the actual resurvey number of the plaint schedule item no 1 property is 68/6 instead of 68/2 stated in the said document.

11. Therefore, the initial investigation must begin from ascertaining the actual resurvey number of the plaint schedule item no 1 property. The 2nd plaintiff in the case was examined as PW1. He filed affidavit in lieu of Examination in chief reiterating the plaint averments. PW1 has deposed that his grandparents were the owners of the plaint schedule item no 4 property and that the said property were transferred to the 1st plaintiff and defendants 9 to 11 by virtue of settlement deed nos. 723/1996 and 900/1997 respectively. Settlement deed no. 723/1996 was produced and marked as Ext A1. A perusal of Ext A1 would show that the 1st plaintiff obtained property as the 4th schedule to the deed and the 5th defendant obtained property as the 1st schedule to the deed. There are other persons who obtained the property by virtue of the said deed. However, in the instant case, considering the nature of contentions, the properties of the aforesaid persons alone are relevant.

12. It is necessary to consider the boundary description of the plaint schedule item no 1 property and the property obtained by the 5th defendant. Ext A1 would show that the plaint schedule item no 1 property is in resurvey number 68/2 of the Anikadu village. The boundary description of item no 1 property are as follows: "കിഴക്ക്-കിഴക്കേ ജോർജ് വക സ്ഥലം, തെക്ക്-കടുത്താനം കുര്യൻ ജോൺ വക സ്ഥലം, മേക്ക്-പഞ്ചായത്ത് വഴി, വടക്ക്-പുത്തൻപറമ്പിൽ ഇപ്പൻ വക സ്ഥലം" The property description of item

no 1 property is as follows: "ടി എലുകയിൽ അടങ്ങിയതും 18 ആർ 40 ച: മീറ്റർ വിസ്തീർണ്ണം ഉള്ളതുമായ സ്ഥലത്തിൽ വടക്കുത്ത് കിഴമേൽ അതായത് തെക്കെടുത്ത് ഞങ്ങളുടെ തനതു കിടപ്പിന് തൊട്ടു വടക്കുവശം 8 ആർ 9 ച: മീറ്റർ വിസ്തീർണ്ണം ഉള്ള സ്ഥലവും അതിലുള്ള സകല വകകളും ആകുന്നു" A scrutiny of the same would show that the 1st plaintiff obtained property at the northern side of the entire 18.40 ares of property belonging to the parents and that the Panchayat road is at the western side of item no 1 property. Ext A1 would show that the plaintiff obtained property in resurvey no. 68/6 of Anikkadu village. The boundary description of the property of the 5th defendant is reproduced herewith: "കിഴക്ക് പഞ്ചായത്ത് വഴി, തെക്ക് കടുത്താനം ജോർജ് വക സ്ഥലം, മേക്ക് ചുഴിക്കുന്നേൽ സാർ വക സ്ഥലം, വടക്ക് ഉതയേകുന്നേൽ സണ്ണി വക സ്ഥലം" The property description of the said property is as follows: "ടി എലുകയിൽ അടങ്ങിയതും 17 ആർ വിസ്തീർണ്ണം ഉള്ളതുമായ സ്ഥലത്തിൽ കിഴക്കെടുത്ത് പഞ്ചായത്ത് വഴിയോട് ചേർന്ന് 10 ആർ 93 ച: മീറ്റർ വിസ്തീർണ്ണം ഉള്ള സ്ഥലവും അതിലുള്ള സകല വകകളും പഴക്കം ചെന്നതായ പുരയും ആകുന്നു". This would mean that the property obtained by the 5th defendant is at the western side of the Panchayat road.

13. The plaintiff produced the certified copy of the resurvey plan and the same was marked as Ext A9. A perusal of the same would show that the property in resurvey no. 68/6 is at the eastern side of a way and the property in resurvey no. 68/2 is at the western side of the way. This is against the boundary description in Ext A1. The defendants 1 to 3 filed written statement admitting that the plaintiff schedule item no 1 property is part of resurvey no. 68/6 and that the plaintiffs were directed to produce rectification deed regarding the same. An Advocate commissioner and surveyor were deputed to identify the plaintiff schedule property and Ext C1 report and C1(a) rough sketch were marked. The plaintiff schedule item no 4

property having an extent of 18.40 ares is shown within "HIJMNOPLKH" letters and shown to be situated at the eastern side of the road. The plaint schedule item no 1 property which is the northern most portion of item no 1 property is shown within "HIJKH" letters and has an extent of 8.09 ares. It is also reported that the plaint schedule item no 1 property is in resurvey number 68/6.

14. At this juncture, it is necessary to consider the dictum of the honourable High Court of Kerala in **Kumaran Krishnan v. Ulahannan Mathai** (1957 KLT 42) wherein it was held that *'the evidence supplied by boundaries, extent, survey numbers and lekhoms forms the determining factors when the identity of property is put in issue. If all these factors harmonise there is little difficulty to identify the property in dispute. But when some of them are in conflict with the rest as when the extent and survey numbers do not agree with the boundaries usually the boundaries predominate and the rest is regarded as erroneous or inaccurate descriptions. This is not an inflexible rule and the guiding principle is to apply that test which is most unlikely to be vitiated by error.'* It was held in **Velu and Others v. Padmavathy Amma and Another, 1984 KHC 463** that *A piece of land may be described in the document or decree correctly or wrongly. Description may be given by reference to village, locality, survey number, lekhom number, extent, measurements or boundaries. At times, descriptions may tally pointing unerringly to a particular plot of land in which case there will be no difficulty in locating the plot. Sometimes the various descriptions given in a document or decree may be in conflict with each other. In such a case, the Court is called upon to adjudicate on the identity of the exact plot intended to be dealt with in the document or decree. No doubt, the Court will at first try to reconcile the various descriptions. If that be not possible, one or more of the descriptions may*

have to be rejected and the other decision rested only on the other description or descriptions. When one of the descriptions is vague and uncertain and another description is definite and certain, the latter may be preferred. If none of the descriptions is vague or uncertain, that description which is more certain and stable and least likely to have been mistaken or inserted inadvertently must be preferred if it sufficiently identified the subject - matter of the transaction and the other descriptions must be rejected as erroneous or inaccurate. This is not a rule of law and therefore is not inflexible in character; it is a mere rule of construction which appears to be safe and almost an infallible guide.'

15. The plaintiff had contended that a portion of the plaint schedule item no 4 property was settled by the parents of the 1st plaintiff in favour of defendants 9 to 11 by virtue of deed no. 900/1997. The said property is scheduled as item no 2. The said document was produced and marked as Ext A2. A perusal of Ext A2 would show that the property is in resurvey no. 68/2 and the property is situated at the northern side of the property of the settlors, southern side of the property of the 1st plaintiff and at the eastern side of the panchayat road. In the case at hand, this fact coupled with the discussion made in paragraph 11 and 12 above would indubitably show that the least ambiguous and certain method to identify the property is based on the boundary descriptions. It would unambiguously show that the plaint schedule item no 1 property is situated at the eastern side of the road and that the property is actually in resurvey no 68/6 of Anikkadu village.

16. PW1 has deposed that he obtained title to the plaint schedule property by virtue of settlement deed no. 664/2011. The said document

was produced and marked as Ext A3. A perusal of Ext A3 would show that the 2nd plaintiff obtained title to item no 1 property. It is the case of the plaintiffs that they had contacted the defendants 2 and 3 to rectify the mistakes in the resurvey records pertaining to item no 1 property. The plaintiff had also issued notice as contemplated under s. 80(1) of CPC. Ext A5 is the office copy of the said notice dated 06-11-2015. Ext A6 are its postal receipts and Ext A7 are its acknowledgement cards. The present suit is filed on 11-04-2016 which is after the period of 60 days contemplated under CPC. Thus, it could be seen that the plaintiff has complied with the procedural formalities as contemplated under CPC.

17. It is already found that the 2nd plaintiff has title over the property in resurvey no. 68/6 and that the said property is mistakenly stated as 68/2 in the title documents. The plaintiffs had paid tax to the property in resurvey 68/2-1. Ext A4 is the tax receipt evidencing the same. This however does not mean that the plaintiffs have title over the property in resurvey no 68/2 as it is well settled that mere entries in revenue records do not confer title. PW1 has deposed that the 4th defendant has challenged his title to the plaint schedule item no 1 property. There is nothing to show that the oral evidence of PW1 cannot be relied upon. Therefore, it is evident that the 2nd plaintiff is entitled to a decree declaring his title over the plaint schedule item no 1 property which is in resurvey no. 68/6 of the Anikkadu village.

18. The necessary corollary is that the plaintiff is also entitled to a decree directing the defendants 1 to 3 to correct the resurvey number in the revenue records also. The same occurred not due to any mistake or lacuna on the part of the revenue officials. It happened due to the

oversight of the executants of Ext A1 as it was executed after finalization of resurvey. Any how, when the title of the 2nd plaintiff over item no 1 property having an extent of 8.09 ares in resurvey no. 68/6 is found, it is only just and proper that the same is reflected in the revenue records as well. Ext A8 is the reply notice issued by the 2nd defendant to Ext A5 notice. It is stated the Additional Tahasildar is empowered to rectify the mistakes in the resurvey records. The Tahasildar is the 3rd defendant in the suit. The 3rd defendant has no case that he is not authorised to make the said changes in the resurvey records. The upshot of the above discussion is that the 2nd plaintiff has title over the plaint schedule item no 1 property having an extent of 8.09 ares in resurvey no. 68/6 of Anikkadu village and defendants 1 to 3 can be directed to make necessary changes in the resurvey records. Thus, Issue no 2 to 6 are found in favour of the plaintiffs.

19. **Issue No 7:** The plaintiff has also sought for fixation of boundary between plaint schedule item no 1, 2 and 3 properties. Plaint schedule item no 3 property is the property which belongs to the parents of the 1st plaintiff and is situated at the southern side of item no 2 property. The Advocate commissioner has identified the plaint schedule item no 2 property and is shown within "JKLMJ" letters in Ext C1(a) and item no 3 property is shown within "LMNOPL" letters. The plaint schedule item no 1 and 3 properties does not share any boundary. The plaintiffs have alleged that item no 3 is a co-ownership property belonging to the 1st plaintiff and defendants 4 to 11.

20. Before delving further, it is necessary to consider whether the plaintiff is entitled to seek fixation of boundaries. It is interesting to note that even though the plaintiff had sought the relief of fixation of boundary,

there in nothing in the pleadings which could show that the boundary of the properties is liable to be fixed. In fact, there is no whisper anywhere regarding the necessity to fix the boundary. There is nothing to show that there is any dispute regarding the boundary of plaint schedule item no 1 and 2 properties or that there is no boundary between item no 1 to 3 properties. The honourable High Court of Kerala in **Bapputty v. Cheriakutty** (1990 (1) KLJ 2018) had held that “*A suit for mere fixation of boundaries is also a suit of 'civil nature' contemplated in S.9 of the Code of Civil Procedure. Cognizance of such a suit is not expressly or by implication barred by any statutory provision including the Survey and Boundaries Act, which provides one remedy in that respect. The decisions of the authorities under the Survey and Boundaries Act are also subject to the decision of the civil court. The only question that may be relevant to the issue in a suit of that nature in the courts in India is whether the suit is one of a civil nature (see P. Narayanan Nair v. E Achuthan Nair and another - 1973 KLT 299 and E. Achuthan Nair v. P. Narayanan Nair and another -AIR 1987 SC 2137), which affirmed the same). But such a suit is definitely subject to the law of the land including the Code of Civil Procedure.... As observed in Narayanan Nair's case (1973 KLT 299) itself, if there is a dispute between two or more parties as regards the location of a boundary and if on demand to cooperate in fixing that boundary it is not given, a suit may also lie at the instance of the demanding party. A suit will also lie where the plaintiff seeks to protect his property by having the boundaries demarcated from that of his neighbour, who threatens encroachment. These are only illustrations. But such a suit could be filed only to enforce a civil right or obligation. If it is merely for ascertaining and fixing the boundaries of his property without any dispute or atleast apprehension of dispute, his remedy may not be before the civil court, but under the*

Survey and Boundaries Act. Civil courts are not intended to take up the duties of the Survey Department.” It was also held that “In order to file a suit, the plaintiff must have a cause of action. A suit of a civil nature is one, the object of which is the enforcement of a civil right or obligation. The word 'civil' means "of or becoming a citizen". It must be for enforcement of the rights or obligations of a person as a citizen. Cause of action involves an enforceable right and its infringement. A right to relief in respect of a cause of action against one or more persons must be there as a condition precedent to the filing of a suit.” In the absence of any cause of action to institute the suit for fixation of boundary, the plaintiffs are not entitled to fix the boundary separating the plaint schedule item no 1, 2 and 3 properties. Hence, issue no 7 is found against the plaintiffs.

21. **Issue no. 8:** The plaintiff has also sought for partition of plaint schedule item no 1 property. According to them, item no 3 property is the remaining portion of property in item no 4 after item no 1 and 2. The plaintiffs contend that the said property is still in the name of the parents of the 1st plaintiff and is thus partible. The contesting defendants had also admitted that the plaint schedule item no 3 property is partible and had paid court fees for partition also. A perusal of Ext A1 and A2 would show that the plaint schedule item no 1 and 2 is part of item 4 property. The question thus is if the remaining extent of property scheduled as item no 3 still belongs to the parents of the 1st plaintiff.

22. The boundary description in Ext A2 would show that the parents of the 1st plaintiff had remaining extent of property at the southern side of item no 2 property. The 5th defendant in the case was examined as DW1. He filed affidavit in lieu of Examination in chief reiterating that the

plaint schedule item no 3 is partible. At present there is nothing to show that the said property does not belong to the parents of the 1st plaintiff or that the same is not partible. Therefore, this court is of the opinion that the plaint schedule item no 3 property is partible. The 1st plaintiff is entitled to 1/7 share and defendants 4 to 8 are entitled to 1/7 share each and defendants 9 to 11 who are the legal heirs of the deceased brother of the 1st plaintiff are together entitled to 1/7 share. Thus, issue no 8 is found in favour of the plaintiffs.

23. **Issue No 9:** The plaintiffs have also sought for a decree of permanent prohibitory injunction restraining defendants 4 to 11 from trespassing into plaint schedule item no 1 property, from annexing any portion of the same, from doing any acts affecting the peaceful possession and enjoyment of the plaintiffs over the plaint schedule property and from altering its lie and nature or from committing acts of waste therein. It is already found that the plaintiff is in possession and enjoyment of the plaint schedule item no 1 property. PW1 has deposed that the apprehension is against the 4th defendant alone and relief is limited to the 4th defendant as well. At present there is nothing to show that the 4th defendant has any right over item no 1 property or that PW1 cannot be disbelieved. Thus issue no 9 is found accordingly.

24. The 5th and 7th defendant had filed counter claim in the case for declaring that the resurvey number of the counter claim item no 1 property is 68/2 and for a decree of permanent prohibitory injunction also. DW1 has deposed that the counter claim schedule property belongs to him by virtue of Ext A1 document. Ext B1 and B2 are the tax receipts in favour of the counter claim 1st plaintiff with respect to the property in resurvey no 68/6.

It is his case that the same is a mistake and resurvey number of the said property was erroneously stated in Ext A1.

25. It is already found that the resurvey number of the property of the plaintiffs and the 5th defendant/counter claim 1st plaintiff is erroneously stated in Ext A1. The discussions made above would also show that the property in resurvey no. 68/2 is at the western side of the panchayat road and that the counter claim item no 1 property is at the western side of the road. Therefore, it is indubitable that the counter claim item no 1 property is in resurvey no. 68/2 and not in resurvey number 68/6 as stated in Ext A1.

26. The counter claim plaintiff has sought relief both against private persons and Government and Public Officers. The counter claim plaintiffs have sought for a decree of mandatory injunction directing counter claim defendants 3 to 5/ defendants 1 to 3 to make necessary changes in the resurvey records. It is worthwhile to note that the counter claim plaintiffs have not issued notice as contemplated under s. 80(1) of CPC. A counter claim is a cross suit and is necessarily governed by the rules of plaint. Therefore, the counter claim plaintiffs ought to have issued notice under s. 80(1) to the counter claim defendants 3 to 5. The question to be then considered is if the said defect goes to the root of the matter and the counter claim against the Government is to be dismissed on that ground.

27. It is well settled that this statutory provision of notice under Section 80 is for the benefit and protection of the Government. It is also equally well settled in **Vellayan Chettiyar v. Government of the Province of Madras** (AIR 1947 PC 197), that the Government can waive

the notice under Section 80 of the Civil Procedure Code. In the instant case, the Government did not file any written statement to the counter claim nor was this point raised during the course of cross examination of DW1. In **Dhian Singh v. Union of India** (AIR 1958 SC 274) it was stated by the honourable Apex Court that " It is relevant to note that neither was this point taken by the respondent in the written statement which it filed in answer to the appellant's claim nor was any issue framed in that behalf by the trial Court and this may justify the inference that the objection under S. 80 had been waived." When the Government for whose protection notice under s. 80 was made mandatory has waived the same, the conclusion that could be drawn is that the plaintiff cannot be non suited on the ground that notice under s 80 was not issued to the counter claim defendants 3 to 5. Therefore, the counter claim defendants 3 to 5 can be directed to make necessary changes in the resurvey number of the counter claim schedule item no 1 property in the resurvey records. The counter claim plaintiffs had also sought for a decree of permanent prohibitory injunction. However, they have filed memo disclosing that they are not pressing the said relief. Hence, the said relief need not be considered.

28. **Issue no. 10:** Based on the discussions held above, the plaintiffs are entitled to succeed in part and the suit is liable to be decreed in part. The counter claim is also liable to be decreed in part. The honourable Apex Court in **Kattukandi Edathil Krishnan and another v. Kattukandi Edathil Valsan and others** (AIR 2022 SC 2841) had held that "*once a preliminary decree is passed by the Trial Court, the Court should proceed with the case for drawing up the final decree suo motu. After passing of the preliminary decree, the Trial Court has to list the matter for taking steps under Order XX R.18 of the CPC. The Courts should*

not adjourn the matter sine die, as has been done in the instant case. There is also no need to file a separate final decree proceedings. In the same suit, the Court should allow the concerned party to file an appropriate application for drawing up the final decree. Needless to state that the suit comes to an end only when a final decree is drawn." In view of the said dictum of the Honourable Apex Court, the case is adjourned to take steps under O XX R 18 CPC. The parties are allowed to file appropriate application for drawing up the final decree. The normal rule is that costs shall follow the event. However, considering the facts and circumstances of the case, the parties are directed to bear their respective costs.

In the result, a preliminary decree is passed as follows:

- a. The title and possession of the 2nd plaintiff over plaint schedule item no 1 property is hereby declared.**
- b. It is further declared that the resurvey number of the plaint schedule item no 1 property is 68/6 of Anikkadu village.**
- c. The defendants 1 to 3 are directed to make necessary changes in the revenue records pertaining to plaint schedule item no 1 property.**
- d. The plaint schedule item no 3 property is found partible. The 1st plaintiff is entitled to 1/7 share, defendants 4 to 8 are entitled to 1/7 share each and defendants 9 to 11 are together entitled to 1/7 share in the plaint schedule item no 3 property.**
- e. 1st Plaintiff and defendants 5 and 7 are entitled to get separate possession of their share.**
- f. Defendants 4, 6 and 9 to 11 are entitled to get separate possession of their share on payment of requisite court fee.**

- g. The parties are allowed to file appropriate application for drawing up the final decree.**
- h. The 4th defendant is restrained by a decree of permanent prohibitory injunction from trespassing into plaint schedule item no 1 property, from annexing any portion of the same, from doing any acts affecting the peaceful possession and enjoyment of the plaintiffs over the plaint schedule item no 1 property and from altering its lie and nature or from committing acts of waste therein.**
- i. It is declared against counter claim defendants that the resurvey number of the counter claim item no 1 property is 68/2 of Anikkadu village.**
- j. The counter claim defendants 3 to 5 are directed to make necessary changes in the resurvey records pertaining to counter claim item no 1 property.**
- k. Parties are directed to bear their respective costs.**

Dictated to the Confidential Assistant, transcribed and typed by her, corrected and pronounced by me in open court on this the 25th day of September, 2024.

Sd/-
ARAVIND S.J.,
MUNSIFF

APPENDIX

Exhibits marked for the Plaintiff:

A1 - Certified copy of settlement deed No.723/1996 dated 11-04-1996 of Mallappally Sub Registrar Office.

A2 - Certified copy of settlement deed No.900/1997 dated 25-04-1997 of Mallappally Sub Registrar Office.

A3 - Certified copy of settlement deed No.664/I/2011 dated 28-03-2011 of Mallappally Sub Registrar Office.

A4 - Tax receipt No.1676362 issued by Anikkadu Village Officer dated 14-01-2004.

A5 - Copy of Advocate Notice issued by Adv.V.A.Joseph dated 06-11-2015.

A6 - Postal receipt No.RL322427006IN dated 06-11-2015.

A6(a) - Postal receipt No.RL322427417IN dated 06-11-2015.

A6(b) - Postal receipt No.RL322427425IN dated 06-11-2015.

A7 - Acknowledgment Card.

A7(a) - Acknowledgment Card.

A7(b) - Acknowledgment Card.

A8 - Letter No.B2-1162/15 issued by Superintendent, Resurvey No.2, Pathanamthitta to Adv.V.A.Joseph dated 06-01-2016.

A9 - Copy of survey plan of field No.68 of Anikkadu Village of Mallappally Taluk issued by Junior Superintendent, Taluk Office, Mallappally.

Exhibits marked for the Defendants:

B1 - Tax receipt No.2196744 issued by Anikkadu Village Officer dated 03-03-2015.

B2 - Tax receipt No.KL03030103365/2022 issued by Anikkadu Village Officer dated 26-05-2022.

Court Exhibits:

C1 - Commission report prepared by Advocate Commissioner Adv.Pradeep Kumar.V and submitted before the court on 27-07-2023.

C1(a) - Survey Plan prepared by K.Vijayakumar, District Survey Superintendent (Rtd.) and submitted before the court by Advocate Commissioner Adv.Pradeep Kumar.V on 27-07-2023

Witness Examined for the Plaintiff:

PW1 - Biju Kurup

Witness Examined for the Defendant:

DW1 - Mathai.P.V

Id/-
MUNSIFF

Typed by:Ajith.G/Compared by:

OS No.211/2016.

**Coy of Judgment in
OS No.211/2016.**

Dated :25.09.2024