

IN THE COURT OF THE MUNSIFF, THIRUVALLA.
Present: Smt.Rejani Thankappan, BAL., LL.B., Munsiff.
Wednesday the 27th day of November 2019
The 6th day of Agrahayana, 1941.SE

OS No.528/2013

Between:-

1. Suma V.T., aged 31, W/o T.K. Soman,
Vengalathu Veedu, Chalappally Muri,
Ezhumattoor Village, Mallappally Taluk.
2. Thankamma P.T., aged 50, (Died),
W/o Thankappan,
Vengalathu Veedu, Chalappally Muri,
Ezhumattoor Village, Mallappally Taluk.

Addl.3 Thankappan,
Vengalathu Veedu, Chalappally Muri,
Ezhumattoor Village, Mallappally Taluk.
(Addl. P3 was impleaded as per order in
IA No. 2871/2018 dated 31.05.2019)
(By Adv. V. jinachandran)

Plaintiffs

And

1. Sicily, aged 46, W/o John Varghese,
Thakidimel Veedu, Ezhumattoor P.O.,
Ezhumattoor Village, Mallappally Taluk.
2. Shino Mon, aged 21, S/o John Varghese,
Thakidimel Veedu, Ezhumattoor P.O.,
Ezhumattoor Village, Mallappally Taluk.
(By Adv. Alezabath George)

Defendants

This suit having been finally heard on 26-11-2019 and stood over for consideration on 27-11-2019 and on the same day the court delivered the following:-

JUDGMENT

Suit for declaration and permanent prohibitory injunction.

2. The plaint averments in brief are as follows:-

Plaint schedule item No. 1 property belongs to the plaintiffs as per sale deed No. 1011/2013 of Vennikulam S.R.O, which is in the possession and enjoyment of the plaintiffs and they are paying property tax. The plaint schedule item No. 1 property is having well defined boundaries. Defendants are the owners of the property situated on the western side of plaint schedule item No. 1 property. The plaintiffs had purchased plaint schedule item No. 1 property and the building situated therein from Mrs. Mary John, Vallipadinjarethil, Ezhumattoor Muri recently. The 1st defendant purchased the property 5 years ago, now he is residing therein. There is a thodu portion passing through the northern side of the plaint schedule item No. 1 property and northern side of the defendants' property towards east, which is used as nadavazhi. The above said thodu portion is described in the eluka description of title deed of the plaintiffs and its prior document. The said thodu is starting from the southern side of PWD road towards east and reached at plaint schedule item No. 1 property which is having 30 feet length and 4 feet width. This portion is using by the plaintiffs as a nadavazhi, which is scheduled as plaint schedule item No. 2. The defendants are trying to increase extent of the 1st defendant's property and obstruct the transportation of the plaintiff through plaint schedule item No. 2 way.

The defendants are removed the steps and the pipeline of Kerala Water Authority towards the house of plaintiffs and obstruct plaintiff schedule item No. 2 thodu (nadavazhi) by depositing tile of the demolished building and also conducted illegal activities. The defendants also trying to obstruct the way passing through the northern side of the defendants' property from making new pathway through the defendants' property and threatening the plaintiffs from using the plaintiff schedule item No. 2 way. The defendants are trying to illegally close the nattuvazhi for getting access to the CMS Pally, cemetery and school situates 100 feet east from the plaintiff schedule item No. 1 property. The plaintiffs have no other way other than the plaintiff schedule item No. 2 way for getting access to plaintiff schedule item No. 1 property. The plaintiffs have right to use plaintiff schedule item No. 2 way continuously, openly and uninterruptedly as of right. The defendants have no right to obstruct plaintiff schedule item No. 2 way. On 23-10-2013 also the defendants threatened the plaintiffs that they will obstruct plaintiff schedule item No. 2 way, the plaintiffs are unable to obstruct the above said act of the defendants. The plaintiff schedule item No. 2 way (thodu) is not part of the defendants' property, which is the portion of the public thodu used by the people in the locality as way. Hence it is highly necessary to declare that the plaintiff schedule item No. 2 way is the only access of the plaintiffs to plaintiff schedule item No. 1 property and to restrain the defendants from their illegal acts. Hence the suit.

3. Defendants 1 & 2 entered appearance and jointly filed written statement with following contentions:-

The suit is not maintainable either in law or on facts. The suit is filed without bonafides. Plaintiffs are not residing in plaint schedule item No. 1 property. Plaintiffs are residing at Methanam, which is 2 km away from plaint schedule item No. 1 property. There is not existed a nadavazhi or thodu as described in the plaint. Marykutty, who is the prior owner of the plaint schedule item No. 1 property travelling through the northern side of her property towards northern Panchayath road. The said Marykutty or anybody had not used the defendants' property for getting access to her property. The description of plaint schedule item No. 2 is not correct. The defendants not tried to encroach any way portion and obstruct the transportation facilities of the plaintiffs. But, the plaintiffs are trying to cut open new pathway through the defendants' property by removing stones of the steps towards the house of defendants. At that time this defendants had filed a suit as OS. 466/2013 before this court. In that case the defendants obtained an injunction order restraining the plaintiffs from committing any illegal acts in the property of defendants. The plaintiffs filed this suit due to the animosity towards the defendants and also with an intention to cut open a new pathway including some portion of the defendants' property. The suit and injunction petition filed without any bonafides. There is no thodu as stated as plaint schedule item No. 2. There is no nattivazhi as stated in the plaint. As per the demand of the

plaintiffs they have no right to get a decree. The defendants had not obstructed the pipe line towards the plaintiffs' house. The plaintiffs tried to draw the pipe line illegally through the property of the defendants, which was obstructed by the authorities. There is no cause of action. The plaintiffs have no right to get any relief. Hence the suit is to be dismissed with compensatory costs of the defendants.

4. The following issues are raised for consideration:-

1. Whether the plaintiffs are entitled to get declaration regarding plaint schedule item No.2 pathway?
2. Whether the plaintiffs are entitled to get permanent prohibitory injunction as prayed for?
3. Relief and costs.

5. The suit was included in the list for evidence on 13-11-2019. On that day the plaintiffs present. Defendants called absent set exparte. Plaintiffs prays time for evidence. On 15-11-19 1st plaintiff present and examined as PW1. She filed affidavit in lieu of chief examination and marked in evidence Exts. A1 & A2, C1, C1(a) & C2 documents. No further evidence. Hence evidence closed Heard.

6. Issue Nos. 1 to 3:-

The plaint claim stands proved from affidavit and supporting documents. Therefore, I conclude that plaintiffs are entitled to get declaration and permanent prohibitory injunction. Issues answered accordingly.

In the result, suit decreed with costs as follows:-

1. It is hereby declared that plaint schedule item No. 2 way (thodu) is the pathway towards the plaint schedule item No. 1 property.

2. Defendants and men under them are restrained from obstructing the transportation of plaintiffs through plaint schedule item No. 2 way, committing any waste or alteration in plaint schedule item No. 2 way, and also from causing encroachment therein.

Dictated to the Confidential Assistant, transcribed and typed by her, corrected and pronounced by me in open court on this the 27th day of November, 2019.

REJANI THANKAPPAN ,
MUNSIFF

APPENDIX

Exhibits marked for the plaintiff:

- A1 : Sale Deed No. 1011/I/2013 dated 11.06.2013 of the SRO, Vennikkulam
A2 : Sale Deed No. 777/1993 dated 12.07.1993 of the SRO, Vennikkulam

Witness examined for plaintiff:

PW1 : Suma V.T

Court Exhibits:

- C1 : Commission Report prepared and submitted by Commissioner Adv. K.K. Kochukunju on 12.11.2013
C1(a) : Rough Sketch prepared and submitted by Commissioner Adv. K.K. Kochukunju on 12.11.2013
C2 : Commission Report prepared and submitted by Commissioner Adv. K.K. Kochukunju on 01.01.2016

MUNSIFF

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FAIR/COPY OF JUDGMENT IN
O. S. No. 528/2013
DATED 27.11.2019
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