

IN THE COURT OF MUNSIFF, THIRUVALLA

Present:-Sri. Aravind.S.J, Munsiff.

Friday the 14th day of February 2025/ 25th day of Magam 1946 SE.**OS 524/2017**

Between

Vinitha Jayakumar, aged 40, W/o Jayakumar,
Vinitha Bhavan, Pallikkachira Kavala P.O,
Payippad Muri & Village, Changanassery Taluk.

(By Adv. P.N.Indira)

} Plaintiff

And

1. K.G.Lalaji, aged 48, S/o K.G.Gananadhan,
Jayamangalathu Veetil, Manthanam P.O,
Kunnamthanam Muri & Village, Mallappally
Taluk.

2. Manju.P.Gopinath, aged 37, W/o K.G Lalaji,
Jayamangalathu Veetil, Manthanam P.O,
Kunnamthanam Muri & Village, Mallappally
Taluk.

} Defendants

(Suit against D1 dismissed on 11.03.2019,
D2-Set Exparte

This suit having been finally heard on 06.02.2025 and stood over for consideration on 14.02.2025 on the same day the court passed the following:-

JUDGMENT

Suit is for perpetual prohibitory injunction.

2. Plaint averments in brief are stated as follows: - The plaint schedule property and the building situated therein originally belonged to the defendant by virtue of Settlement deed No. 1841/2015. The defendants had sold the plaint schedule property and the building situated therein to the plaintiff by virtue of Sale deed No. 290/2016 and thereafter the plaintiff is in absolute possession and enjoyment of the same. The defendants have no right or authority over any portion of the plaint schedule property and the building situated therein after the date of execution of the said document. Matters being so, the defendants are now attempting to trespass into the plaint

schedule property and the building situated therein. There are two building consisting of two shop rooms in the plaint schedule property and the defendants are attempting to trespass into the same and take possession of it. The defendants have no right or authority to do so. Hence the suit.

3. Summons could not be served to the 1st defendant in the ordinary way and the plaintiff filed I.A. 5/2024 under O V R. 25. The said petition was allowed. Paper publication was produced. The 1st defendant did not file vakkalath and hence he was set exparte. Summons duly served on the 2nd defendant and she filed written statement contending as follows:- The suit is not maintainable either under law or on facts. It is true that the plaint schedule property originally belonged to the defendants. However it is false to allege that the defendants have executed a sale deed as No. 390/2016 of the Mallappally SRO. The defendants have not obtained any consideration for the same and the said document was executed only as a security as part of financial transaction between the parties. The plaintiff and the husband had obtained forceful possession of the plaint schedule property and the building situated therein from the defendants and had filed the present suit. It is false to allege that the plaint schedule property was in the possession of the plaintiff from the date of execution of the said sale deed. The 2nd defendant and his daughter are residing in the residential portion of the building situated in the plaint schedule property. The plaintiff had forcefully trespassed into the building situated in the plaint schedule property. The 1st defendant was conducting a business by name Ultertech in the building situated in the plaint schedule property for the past 14 years and he had incurred huge financial loss. Thus he was constrained to take loan for continuing his business. The husband of the plaintiff is a loan shark and he and the 1st defendant had contacted him and had promised to pay the amount sought for on condition that an amount of Rs. 33,500/- is to be paid as interest. Thus the 1st defendant had obtained an amount of Rs. 7,50,000/- from the husband of the plaintiff in February 2016. The husband of the plaintiff had obtained two stamp papers valued Rs. 100 each, two blank white papers containing the signature of the defendants. The husband of the plaintiff had also sought for executing

a deed with respect to the plaint schedule property in favour of the plaintiff and it was promised that the said property would be re conveyed on payment of the amount. As the defendants were in dire need of money, they had executed the sale deed. The defendants were paying interest to the plaintiff and her husband from February 2016. Matters being so, the plaintiff and her husband sought for interest of Rs. 40,000/- per month from August 2016 and when the defendants refused to do so, the plaintiff and her husband became inimical towards the defendant. The defendants were remitting tax for the plaint schedule property and the electricity connection was also in the name of the 1st defendant. When the plaintiff and her husband attempted to oust the defendants from the plaint schedule property, they have preferred complaint before the Police. However no action was taken. In the meanwhile, the 1st defendant went abroad. The plaintiff had forcefully taken possession of the building on 12-12-2017 when the 2nd defendant was not in station. The plaintiff and her henchmen had destroyed the articles kept in the rooms and thus the defendants have suffered a loss of Rs. 1,50,000/-. Thereafter the present suit was filed. After the visit of the Advocate commissioner in the plaint schedule property, the plaintiff and her husband are taken all the valuable articles belonging to the defendant from the plaint schedule property. None of the reliefs sought for can be allowed. There is no cause of action to institute the suit. Hence the suit is liable to be dismissed.

4. Based on the aforesaid pleadings put forth by the parties, the following issues arose for consideration.

1. Whether the plaintiff is entitled to get a decree for permanent prohibitory injunction as prayed for?
2. Relief and costs?

5. With the aforesaid pleadings, the parties went to trial. On the day fixed for trial, there was no appearance or representation for the 2nd defendant and hence she was placed exparte. The plaintiff in the case was examined as PW1 and Exts. A1 to A5 were marked. Commission report and rough sketch were marked as Ext. C1 and

C1(a).

6. Heard the learned counsel for the plaintiff.

7. **Issue No. 1:** The case of the plaintiff is that plaintiff schedule property originally belonged to the defendants and the same was later sold to the plaintiff by virtue of Sale deed No. 290/2016 of the Mallappally SRO and that the plaintiff is in possession and enjoyment of the plaintiff schedule property and the building situated therein. It is the case of the plaintiff that the defendants are attempting to trespass into the plaintiff schedule property and that they have no right or authority to do so. The defendants per contra contends that the said sale deed was only executed as a security for obtaining loan from the husband of the plaintiff and that it was promised that the same would be re conveyed when the amount is repaid. It is the contention of the defendants that the plaintiff sought for exorbitant amount as interest and that they have obtained forceful possession of the property immediately prior to the institution of the suit.

8. In order to substantiate her case, the plaintiff in the case was examined as PW1. She filed affidavit in lieu of examination in chief. PW1 has deposed that the plaintiff schedule property was obtained by her by virtue of Sale deed No. 290/2016. The said document was produced and marked as Ext. A1. Ext. A1 would show that the plaintiff has obtained title over the plaintiff schedule property. The recitals in Ext. A1 would also show that the possession of the plaintiff schedule property and the building situated therein was handed over to the plaintiff by the defendants. Ext. A2 is the tax receipt with respect to the plaintiff schedule property in favour of the plaintiff. Ext. A3 is the building tax receipt with respect to building No. 14/460 of the Kunnamthanam Panchayat in favour of the plaintiff. Ext. A4 is the demand cum disconnection notice of the Kerala State Electricity board for consumer No.1146231015712 issued to the plaintiff. Ext. A5 is the possession certificate with respect to the plaintiff schedule property.

9. The Advocate Commissioner appointed in the case filed Ext. C1 commission report and C1(a) rough sketch. The Advocate commissioner has reported the lie and

nature of the plaint schedule property. Even though the defendants have contended that Ext. A1 document was only executed as security for obtaining loan from the husband of the plaintiff, they did not adduce any evidence to substantiate their claim. Even the defendants have admitted the execution of Ext. A1 document, then the burden is on them to show that the same was not intended to be acted upon or that intention of the parties was something else. The oral evidence of PW1 coupled with the documents produced bring out a probable case in favour of the plaintiff that the plaint schedule property is in her possession. Therefore this court is of the opinion that the plaintiff is entitled to a decree of perpetual prohibitory injunction restraining the defendants from trespassing into the plaint schedule property and the building situated therein and from doing any acts affecting the peaceful possession of the plaintiff over the plaint schedule property and the building situated therein. Issue No. 1 is found in favour of the plaintiff.

10. **Issue No. 2:-** Based on the discussions made above, the plaintiff is entitled to succeed and the suit is liable to decreed. The general rule is that the costs shall follow the event. This court finds no reason to deviate from the said rule. Hence the plaintiffs are entitled to the costs of the suit.

In the result, this suit is decreed as follows:-

- 1. The defendants are restrained by a decree of perpetual prohibitory injunction from trespassing into the plaint schedule property and the building situated therein and from doing any acts affecting the peaceful possession of the plaintiff over the plaint schedule property and the building situated therein.**
- 2. The plaintiffs are entitled to the costs of the suit.**

Dictated to the Confidential Assistant, transcribed and typed by her, corrected and pronounced by me in open court on this the 13th day of February 2025.

Sd/-

ARAVIND.S.J
MUNSIFF

<u>APPENDIX</u>		
<u>I. Exhibits marked for Plaintiff</u>		
A1	-	Sale deed No. 290/I/2016 dated 18.02.2016 of Mallappally SRO.
A2	-	Tax receipt of No. KL03030509121/2024 issued by Kunnamthanam Village Officer, dated 17.10.2024.
A3	-	Cash receipt No. 1240302427/9030106 issued by Kunnamthanam Grama Panchayat dated 21.10.2024.
A4	-	Demand cum Disconnection notice of bill number 4623241115584 issued by Kerala State Electricity Board Limited, Electrical Section Mallappally dated 21.11.2024.
A5	-	Possession certificate No. 89102557 issued by Kunnamthanam Village Office, dated 22.10.2024.
<u>II. Court Exhibits.</u>		
C1	-	Commission Report prepared by Advocate Commissioner Adv. K.R.Gopakumar & submitted before the court on 02.08.2018.
C1(a)	-	Rough sketch prepared by Advocate commissioner Adv. K.R.Gopakumar and submitted before the court on 02.08.2018.
<u>III. Witness examined for plaintiff.</u>		
PW1	-	Vinitha Jayakumar.

Id/-
MUNSIFF

Typed by: Joji
Comp. By: Ashitha

Fair/Copy Judgment in O.S 524/2017
Dated 13 -02-2025