

IN THE COURT OF THE MUNSIFF RANNY
Present:- Smt. Parvathi. S. R, LL.M, Munsiff.

Tuesday the 8th day of August, 2017
17th day of Sravana 1939 SE

OS.No.187/13

Between:

Santhosh Punnoose Jacob,
S/o Jacob, aged 42 years,
Manimalathaya Thaiparmbil House,
Chethackal Muri, Chethackal Village,
Ranny Taluk, Pathanamthitta District,
Represented by his Power of Attorney Holder
C. J. Kunjunjamma, W/o M. P. Jacob,
aged 69 years, Manimalathaya Thaiparmbil-
House, Chethackal Muri, Chethackal Village,
Ranny Taluk, Pathanamthitta District.

} Plaintiff

(By Advs. Alex. P. Chacko and Litty Thomas)

And:

1. The state of Kerala, represented by
the District Collector, Pathanamthitta.
 2. The Tahsildar,
Ranny Taluk, Ranny.
 3. The Village Officer,
Ranny Village, Ranny Taluk.
 4. Prasad Kuzhikkala,
aged about 47 years,
Kuzhikkala House, Thottamon Muri,
Ranny Village, Ranny Taluk.
- } Defendants

(The 4th defendant is arrayed also as representative of all persons claiming to the members of Thiruvabharana Patha Samrakshna Samithi and all persons claiming under or interested in Ramapuram Devaswom)

(By Advs. S. Balasankar for D1 to D3 and Adv. C. R. Vijayan Nair for D4)

This suit having been finally heard on 01.08.2017 in the presence of Advs. Alex. P. Chacko and Litty Thomas, counsel for plaintiff and Advs.S. Balasankar for D1 to D3 and Adv. C. R. Vijayan Nair for D4 and having stood over for consideration on 08.08.2017 the court delivered the following.

JUDGMENT

The suit is for permanent prohibitory injunction .

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

The plaint schedule item No.1 and 2 properties belong to the plaintiff vide sale deed No.1847/1989 and 61/1991 of Ranny SRO. The plaintiff is in absolute possession and enjoyment of the suit properties which lie contiguously within common boundaries. The said properties are well bounded by ancient kattu kayyala on all sides. The suit properties were being periodically planted with Albesia trees. There are other valuable trees such as teak, anjili, acacia etc. in the suit properties. There is a private pathway on the Western side of the suit properties in north south direction. The way was permissively used by Pulickal Abraham who is no more, and it is now being used by his family who are residing on the immediate south of the suit properties. While so the 4th defendant who claims himself to be an office bearer of an unregistered association known as Thiruvabharanapatha Samrakshana Samithi has threatened to cut open a way through the plaint schedule properties. The said defendant has wrongfully and reliably claimed that there existed a way in the ancient times through the suit properties through which Thiruvabharanam was taken from Pandalam to

Sabarimala. The 4th defendant also claiming that the suit properties belong to Ramapuram Devaswom. The above claim of 4th defendant is baseless and the suit properties are private registered holdings from ancient times. The said properties were never part of any temple or Devaswom properties. There are numerous other petitioners who are also interested to cut open a way through the plaint schedule properties under the guise of reclaiming the alleged Thiruvabharanapatha in denial of plaintiffs' right, title and possession. The 4th defendant is sued also as a representative of all persons who are interested in the subject matter. The first defendant State of Kerala and its officers are joined hands with 4th defendant for cutting open a way through the plaint schedule properties. The defendants had earlier cut opened a way till the southern boundary kayyala of the suit properties about 2 months ago. On 30.6.13, the 4th defendant along with his henchmen trespassed into the suit property and destroyed about 890 Albeesia saplings stood therein. They tied a banner in the suit property which reads 'Ramapuram Devaswom vaka'. The plaintiff was summoned to Ranny police station on 1.7.13 and was forced to affix his signature on several papers. Hence the defendants are to be restrained from trespassing upon the suit properties, from cutting open a new way through the said properties and from committing waste therein.

3.Hence this suit.

4. The defendants 1 to 3 filed written statement contending that the

plaint schedule property is in Sy.No.443/3-2 and 443/16 and the said property belongs to Ramapuram Devaswom. Ramapuram Devaswom is under the Thiruvithamcore Devaswom Board. In the Land Conservancy Act and Travancore Recoveries Institution Act it is stated that the said properties are vested with Travancore Devaswom Board. Therefore the Travancore Devaswom Board is necessary party to the suit. As Travancore Devaswom Board is not made a party to the suit it is bad for non-joinder of necessary parties. The defendants 1 to 3 are not necessary parties to the suit. These defendants never tried to construct a road through the plaint schedule property along with 4th defendant. If the Travancore Devaswom Board or its officials have decided to do so the State of Kerala is not liable for the same. The plaintiff has no right over the plaint schedule property. The suit is liable to be dismissed against these defendants.

5. 4th defendant filed written statement contending that the boundary description, survey numbers, extent and the right of the plaintiff over the plaint schedule properties are denied. The title documents of the plaintiff are fabricated documents. The plaintiff is not in possession and enjoyment of plaint schedule properties. He has got right over a small portion of land. In the schedule, he has included purampoke land used as Sabarimala-Thiruvabharanapatha and the resting place. In the schedule he stated the above said land as 'virivu'. The 4th defendant has not threatened the plaintiff to cut open a way through the plaint schedule properties. It is true

that the Thiruvabharanam was taken from Pandalam to Sabarimala through the plaint schedule property over which the plaintiff has no right. The plaintiff has no right to implead the 4th defendant as a representative of all persons who are interested in the subject matter of the suit. The 4th defendant and his henchmen did not trespass into the suit properties and destroyed Albeesia trees as averred. The averment that the 4th defendant and others tied banner in the suit properties which reads 'Ramapuram Devaswom vaka' is also false and hence denied. The allegation that the police has forced the plaintiff to affix the signature on several papers is not known to this defendant. The suit filed with malafide intention of claiming right over the purampoke land which has been in existence and used as Thiruvabharanapatha and the resting place associated with the same. The plaintiff has no title, possession or right over the property stated as 'virivu' in the plaint item No.1 and 2 properties. The plaintiff is not entitled to get any reliefs as prayed for and the suit is liable to be dismissed.

6. Based on the above pleadings, the following issues are raised for consideration by my learned predecessor:-

1. Whether the plaintiff has title and possession over the plaint schedule properties as claimed for?
2. Whether the plaintiff is entitled to get a decree for permanent prohibitory injunction as prayed for?
3. Reliefs and costs.
7. During trial, PW1 and PW2 are examined and Exts.A1 to A12 are

examined from the side of the plaintiff. DW1 and DW3 are examined and Exts.B1 to B3 are marked from the side of the defendants 1 to 3 and DW2 is examined from the side of the 4th defendant. Exts.C1 series is marked as court exhibits.

8. Heard both sides.

9. Issue No.1:- The plaintiff is claiming title and possession over the plaint item 1 and 2 properties. According to the plaintiff, the said properties are lying contiguously within well defined old kayyalas on all 4 sides. He is further contending that the 4th defendant claiming himself to be an office bearer of an unregistered association known as Thiruvabharanapatha Samrakshana Samithi, trying to cut open a new way through the plaint schedule properties. The defendants 2 and 3 also supporting the 4th defendant in the above matter. The defendants 1 to 3 are contending that the plaint schedule property is in Sy.No.443/16 and 443/3-2 and it belongs to Ramapuram Devaswom Board which is under the Travancore Devaswom Board and the plaintiff has no title over the plaint schedule property. It is also contended that the defendants 1 to 3 never tried to cut open a way through the plaint schedule property along with 4th defendant. The 4th defendant is contending that the plaint schedule property includes the purampoke property which is used as Thiruvabharanapatha and the resting place and the plaintiff is not in possession and enjoyment of the entire plaint item 1 and 2 properties and

he has got right over only a small portion of the land. It is further contending that the 4th defendant has never attempted to cut open a way through the plaintiff schedule property.

10. The defendants are challenging the locus standi of the power of attorney holder of the plaintiff to contest the suit. The photocopy of power of attorney alone was produced at the initial stage of the suit and later the certified copy of power of attorney is produced and marked as Ext.A8(a). Ext.A8(a) authorities to represent him in civil and criminal disputes with respect to plaintiff schedule properties. Hence the above contention of the defendants is not sustainable.

11. The 4th defendant is made a party in a representative capacity representing all the persons who are interested in the subject matter of the suit as aforesaid. The 4th defendant in his written statement contended that the plaintiff has no right to implead the 4th defendant as a representative of all persons who are interested in the subject matter of the suit. The defendants 1 to 3 specifically pleaded in their written statement that the plaintiff schedule property belongs to Ramapuram Devaswom which is under the Travancore Devaswom Board and Travancore Devaswom Board is a necessary party to the suit. But the plaintiff has not taken effort to implead Ramapuram Devaswom Board or Travancore Devaswom Board as a party to the suit. It is true that the plaintiff has produced Order 1 Rule 8 paper publication in this case. But it is unable to hold that the decision in the case

will be binding on Ramapuram Devaswom or Travancore Devaswom Board as they are not parties to the suit. The 4th defendant even if he is a member of unauthorized organization named as Thiruvabharanapatha Samrakshanasamithi, he is not entitled to represent Ramapuram Devaswom or Travancore Devaswom Board. Hence the decision in the case will not be binding upon Ramapuram Devaswom or Travancore Devaswom Board. As the decision is not binding on Ramapuram Devaswom or Travancore Devaswom Board it is unable to hold that the suit is bad for non-joinder of necessary parties.

12. As per the description in the plaint, the plaint schedule item No.1 property belongs to the plaintiff as per sale deed No.1847/1989, the said document is marked as Ext.A1. As per the description in the plaint, it is 1 acre 27 cents and as per revenue records it contains 31 cents in Sy.No.44/3-2 and 25 cents in Sy.No.443/16. But on measurement its total extent is 1 acre 98 $\frac{3}{4}$ cents. In the plaint schedule the survey number of the above said property is stated as 443/3-2 only but it is stated in the description as survey numbers 444/3-2 and 443/16. From the description in Ext.A1 it is clear that the total extent is 73.65 ares and out of it 12.55 ares has been sold to the plaintiff in Sy.No.444/3-2. It is further described in Ext.A1 that the total extent in Sy.No.443/16 is 10.12 ares and the said total extent has been given to the plaintiff. Hence the total extent of property obtained by the plaintiff as per Ext.A1 is only 22.67 ares which is equivalent to 56 cents.

It is further described in Ext.A1 that the total extent of the property remaining after the properties sold out as per the deed is 1 acre 27 cents and it is 1 acre 98 $\frac{3}{4}$ cents as per measurement. The plaintiff is claiming title and possession over the property with the same description. The plaintiff item No.2 property is 39 $\frac{1}{4}$ cents in Sy.No.444/3-2 obtained by the plaintiff as per sale deed No.61/1991 which is marked as Ext.A2. The power of attorney holder of the plaintiff is examined as PW1. She has deposed that total extent of property is 2 acre 40 cents. There is no measured plan to ascertain the exact extent of the plaintiff schedule properties. Ext.C1 series is marked through PW2, the commissioner advocate. In Ext.C1 series it is reported that the plaintiff schedule properties are lying together contiguously within old kayyalas on all the four sides. According to the plaintiff he is cultivating albeesia trees standing in the plaintiff schedule properties and other valuable trees like teak, anjili etc. are also there in the plaintiff schedule property. In Ext.C1 series also it is reported that there are albeesia trees and some of which are seen cut down and some new saplings were seen planted therein. It is further reported in Ext.C1 series that the said properties contains other trees like teak, anjili, jack tree, Acacia. In Ext. C1 (a), the neighbouring properties are also identified. The defendants have no case that the commissioner advocate has gone to some other places or the plaintiff schedule property identified by the commissioner advocate is not correct. Moreover they are claiming that the pathway identified in Ext.C1(a)

through the plaint schedule property is the Thiruvabharanapatha. According to the defendants, the plaint schedule property consists of Thiruvabharana patha and the resting place. Therefore the defendants are admitting that Ext.C1 series is pertaining to the plaint schedule properties. From Ext.C1 series it is clear that the plaint schedule properties are lying within well defined boundaries. PW2, the Advocate Commissioner has deposed that the boundary kayyalas of the plaint schedule property has more than 50 years of age on appearance. The nature of boundary kayyalas on northern and southern sides of the said properties are single faced and the boundary kayyalas on the eastern and western sides of the said properties are double faced. It is reported that the plaint item 1 and 2 properties are not separated with any boundaries. It is also reported that a new pathway has been seen constructed outside the plaint schedule properties until the southern boundary of the said properties and it has an approximate age of 6 months. It is also reported that a pathway is passing through the plaint schedule property and a flex board is seen installed therein with inscriptions ' Ramapuam Devaswom Vaka'. In the cross examination PW2 has deposed that the new road constructed till the southern boundary of the plaint schedule property has no connection with the pathway seen within the plaint schedule properties. The case of the plaintiff is that the 4th defendant and his men tried to construct a new way through the plaint schedule property and with the above intention they

installed a board therein containing the writings 'Ramapuram Devaswom Vaka'. The said board has been located by the commissioner advocate within the plaint schedule property. He further clarified in his re examination that the pathway is ending in the property of Pulickal family. Thus from the deposition of PW2 and from Ext.C1 series it is clear that the plaint schedule properties are lying contiguously within well defined old boundaries and no road is passing through the same and the pathway passing through the said property is ending at the Pulickal family which is not a continuation of the Thiruvabharanapatha. The village officer who is examined as DW1 has deposed that he has visited the plaint schedule property. It is also deposed that the property of Ramapuram Devaswom is situated in Sy.No.443/10B which has been recovered by the Travancore Devaswom Board. In his chief affidavit it is stated that the plaint schedule properties and the 1.08 acres of Travancore Devaswom Board are different properties. He admitted that the defendants have no case that the plaintiff has encroached into the properties in Sy.No.443/10B. He further admitted that the properties over which the plaintiff is claiming right is lying as a compact plot within a single boundary. DW2, the 4th defendant has filed proof affidavit in which it is stated that the plaintiff has right only over 95 ¼ cents and Thiruvabharanapatha and its resting place are situated in the remaining property and the plaint schedule includes puramboke property. In his cross examination he has deposed that the Thiruvabharanapatha is situated

within the property of Ramapuram Devaswom. He again deposed that he has verified the documents obtained from village office by Travancore Devaswom. But he failed to produce any such document. Further he deposed that Ramapuram Devaswom has properties in survey numbers 443/10B and 443/8. But the plaint schedule properties are not comprised in the above survey numbers. He further admitted that the plaintiff is attempting to trespass into the property of Ramapuram Devasom and not yet succeeded in that. Thus it is clear that the 4th defendant has failed to establish that the plaintiff is in possession of the property of Ramapuram Devaswom. DW3, the Tahsildar in his proof affidavit deposed that the plaint item No.1 and 2 are not lying adjacently. But such a contention was not taken in the written statement. Moreover from Ext. C1 series it is come out in evidence that the above 2 properties are lying contiguously within old boundaries on all the four sides. Another contention raised by DW3 is that he has received several complaints against the plaintiff that he has encroached into puramboke property. No such complaint seen produced. Moreover in the written statement of D1 to 3 they have no such cases. Further he admits that as per Ext. A10 the plaintiff has 93 ares of property. But he deposed that entries in Ext. A10 is not final and it is subject to correction. But it is already come out in evidence that the plaint schedule properties are situated contiguously within well defined boundaries and the plaintiff has possession over the said properties.

13. Ext.A5 is the proceedings of Special Tahsildar and Executive Magistrate, Land Conservancy Unit, Travancore Devaswom Board, Thiruvananthapuram. Ext.B3 and A5 are the same documents. In Ext.A5 it is stated that 1.08 acres of the Devaswom land comprised in Sy.No.443/10B of Ranny village is taken possession by Special Tahsildar of Travancore Devaswom Board and handed over to Devaswom Assistant Commissioner, Aranmula. From Ext.A5 it is further clear that the said property was in the possession of private individuals other than the plaintiff. Ext.A4 BTR would show that the property in Sy.No.443/10B is in the name of Ramapuram Devaswom. Property in survey number 443/16 is in the name of Kannankuzhayathu Unneettan Kurian and the property in Sy.No.443/3 is also in the name of the same person. Ext.B2 would show that the property in Sy.No.443/10B was in the name of Raju Kurian and Sabu K.Abraham, who are the sons of Kannankuzhayathu Unneettan holding Thandaper Account No.5126 has been recovered as per the proceedings of Special Tahsildar and the property has been handed over to Devaswom Assistant Commissioner, Aranmula. Ext.B2 would show that the 1.08 acres of land which was belonged to Ramapuram Devaswom Board was recovered from the possession of Raju Kurian and Sabu K Abraham and which is in Sy No.443/10B. Ext.A10 Field register would show that the property in Sy.No.443/16 and 444/3-2 are in the name of the plaintiff and it is comprised in Re Sy.No.148/7. Ext.A11 is the resurvey plan of Field No.148 and Ext.A12

is Resurvey plan of Field No.157. The learned counsel for the defendants raised an objection that Ext.A11 and A12 resurvey plans are not final. It is admitted that Ext.A11 and A12 resurvey plans are not finalised. Eventhough the not finalized plan cannot be considered for deciding the title and possession of the parties, these plans can be considered for identifying the location of properties is various survey numbers. Thus from the available evidences, it is clear that plaint schedule property is comprised in Sy.No.443/16 and 444/3-2 and the plaintiff is not claiming any right over the property comprised in Sy.No.443/10B. The defendants 1 to 3 have no case that the plaint schedule property includes any purampoke land. But the 4th defendant in his written statement has contended that the plaint schedule property includes purampoke property and Thiruvabharanapatha and the resting place are situated in the plaint schedule property. He further contending that it belongs to Ramapuram Devaswom. But it is already found that the property of Ramapuram Devaswom is in Sy.No.443/10B which has been recovered Special Tahsildar, Land Conservancy and has been handed over to Devaswom Board and the said property is different from the plaint schedule property. The defendants 1 to 3 failed to produce any document to show about the plaint schedule properties includes any government land. From Ext.C1 series it is clear that the plaint schedule properties is lying within well defined old boundaries. Hence it can safely be concluded that the plaintiff has possession over the entire plaint schedule

property. It is settled law that even if some excess land is situating within the boundaries of the property of the plaintiff, the plaintiff has title over the said excess land also. The defendants have failed to substantiate any better title over the plaint schedule property than the plaintiff. It is true that as per the description in the plaint, the plaint schedule property includes excess land. But it is already found that the plaint item 1 and 2 properties are lying contiguously within well defined boundaries. Hence the excess land is found in the possession of the plaintiff. **In Krishnankutty Nair v. Subramanian 1988 (1) KLT 886** it is held that the court can always protect the possessory right of a person except against the true owner unless the remedy of the latter is barred by limitation. It is settled position that as between two persons who are unable to make out a valid title the person who was having possession prior to the dispossession is really entitled to have the property restored to him from the trespasser. In **Barman v.Raju 1969 KLT SN 70** the Hon'ble Apex Court has held that the possessory title is good title as against everybody other than the lawful owner. **In Chandrakumar v. Narayanan Bahuleyan 2011 (3) KLT 185 the Hon'ble High Court has held that** when the description of property is clear and within the 4 boundaries stated in the document more extent of land than that shown in the document is in the possession of the plaintiffs the mere fact that there is larger extent than that shown in the document by itself would not deprive the plaintiffs to get title to the excess

extent. In the instant case, the extent of properties stated in Ext.A1 and A2 and the extent scheduled in the plaint are same and the plaintiff has succeeded in proving the possession over the entire plaint schedule properties. Hence even if some excess land is in existence within the clear boundaries the plaintiff has title and possession over the same. The defendants have failed to plead or prove a better right over the plaint schedule property than the plaintiff has. Admittedly the 4th defendant is the member of unauthorised organization namely Thiruvabharanapatha Samrakshana samithi . In Ext.C1 series it is reported that some trees are seen cut and removed and a banner has been seen inside the plaint schedule property in which it is written as 'Ramapuram Devaswom vaka'. The above facts would support the case of the plaintiffs that the local inhabitants are trying to construct a new road through the plaint schedule property. The defendants in the written statement contending that the Thiruvabharanapatha is passing through the plaint schedule property. Therefore the apprehension of the plaintiff that the 4th defendant and his men will trespass into the plaint schedule property and will cut open a new way through the same is not baseless. The defendants 1 to 3 also failed to plead and prove any kind of right over the plaint schedule properties. Therefore the plaintiff is entitled to get a decree for permanent prohibitory injunction as prayed for against the defendants. As Ramapuram Devaswom or the Travancore Devaswom Board are not parties to the suit, the plaintiff is

not entitled to get a decree against Ramapuram Devaswom as prayed for. This issue is decided accordingly.

14. Issue N.2:-

In the result, the suit is decreed with costs.

The defendants and persons claiming under them are permanently restrained from trespassing into plaint schedule property, cutting open a new way through the plaint schedule properties, destroying any trees standing therein, committing any acts of waste therein and from interfering with the right, title and possession of the plaintiff over the plaint schedule properties otherwise than under due process of law.

Dictated to the Confidential Assistant, transcribed and typed by her, corrected and pronounced by me in open court on this the 8th day of August, 2017.

Sd/-
PARVATHI. S.R
MUNSIFF

APPENDIX:
Exhibits Marked for plaintiff

A1	19.10.1989	Original sale deed No. 1847/89 of Ranny, SRO
A2	09.01.1991	Original sale deed No. 61/91 of Ranny, SRO
A3	23.09.2015	Original Tax Receipt No. 2595259 issued by Ranny Village office
A4	NIL	Certified copy of the relevant page of settlement Register. Page No. 492 and 493
A5	07.05.2013	Certified copy of proceedings of the

		special Tahsildar and Executive Magistrate Land Conservancy Unit Travancore Devaswom Board Thiruvananthapuram.
A6	03.03.2014	Letter dated A1 616/12 sent by the special Tahsildar Land Conservancy Unit Travancore Devaswom Board.
A7	NIL	Certified copy of the relevant page of the Thandaper register pertaining to TP No. 5126 of Ranny Village.
A8	NIL	Copy of Power of Attorney
A8(a)	NIL	Certified copy of Power of Attorney executed by Santhosh Punoose in favour of Kunjunjamma. C. J
A9	20.11.2013	Certified copy of the relevant page of Fair Land Register issued by Technical Assistant Survey and Land Records, Pathanamthitta.
A10	NIL	Certified copy of the relevant page of Field Register issued by Technical Assistant Survey and Land Records, Pathanamthitta.
A11	04.07.2017	Certified copy of the Survey plan issued by Technical Assistant Survey and Land Records, Pathanamthitta.
A12	31.05.2013	Certified copy of the survey plan issued by Technical Assistant Survey and Land Records, Pathanamthitta.

Exhibits Marked for defendants

B1	NIL	Certified copy of the relevant page of Land Tax Register issued by Village Office Ranny
B2	NIL	Certified copy of the relevant page of Thandaper Account Register TP. No. 5126. Issued by Village Office, Ranny
B3	07.05.2013	Copy of proceedings of the special Tahsildar and Executive Magistrate Land Conservancy Unit Travancore

Devaswom Board, Thiruvananthapuram
A1-616/2012

Court Exhibits

C1 Series

C1	12.07.2013	Report prepared and submitted by Commissioner Adv. N. Somanathan Nair
C1(a)	12.07.2013	Mahazer prepared and submitted by Commissioner Adv. N. Somanathan Nair
C1(b)	12.07.2013	Rough sketch prepared and submitted by Commissioner Adv. N. Somanathan Nair

Witness Examined for Plaintiff

PW1 C.J. Kunjoonjamma

PW2 N. Somanathan Nair

Witness Examined for Defendants

DW1 Mathew. C. I

DW2 Prasad Kuzhikala

DW3 Gregory. K. Philip

MUNSIFF

Typed by: Athma Raj. T. R
Compared by:

FAIR/COPY OF JUDGMENT
IN OS NO. 187/13
DATED: 8-08-2017