

IN THE COURT OF THE SUBORDINATE JUDGE, IRINJALAKUDA
Present: Sri. K.Shine., B.Sc., LL.B., Principal Sub Judge
Friday, the 14th day of February, 2019/25th Magha, 1941 SE

O.S.203/2014

Plaintiff:-

Shanmughan, Aged 65, S/o Kovil Thekkevalappil Velayi,
Residing at Koorikuzhi West, Kaipamangalam Village,
Kodungallur Taluk.

By Adv: By Adv: K.V. Raghuthaman

Defendants:-

- 1 Gopalakrishnan, Aged about 60, S/o Pandikasalaparambil Apputty,
Residing at Koorikuzhi West, Kaipamangalam Village,
Kodungallur Taluk.
- 2 Shijil, Aged about 35, S/o Pandikasalaparambil Sivaraman,
Residing at Koorikuzhi West, Kaipamangalam Village,
Kodungallur Taluk.

By Adv: D1 – V.G. Subash Chandra Babu D2 – K.N. Prathabhan

This suit coming on this day for hearing before me the court on the same day delivered the following:

J U D G M E N T

This is a suit for permanent prohibitory injunction.

2. The plaint averments can be summarised as follows. The plaintiff obtained the plaint schedule property as per sale deed no.2195/1985 of SRO, Mathilakam. The plaintiff purchased the property from the first defendant. The plaintiff has put up boundary and the

property is protected. The plaintiff is residing half a kilometre away from the plaint schedule property. The western side of the plaint schedule property is a road. The plaint schedule property is having an “L” shape. On the southern side of the plaint schedule property, the first defendant is residing. The first defendant has constructed a foundation for house in his property. The second defendant is the son of elder brother of the first defendant. The defendants demanded some property from the plaint schedule property for a small price. The plaintiff refused. The defendants threatened to encroach into the plaint schedule property and destroyed some fencing stakes. The defendants have no right to do so. Hence the suit.

3. The defendants filed a written statement contending as follows. The plaint schedule property is not the property purchased as per sale deed no.2195/1985 of SRO, Mathilakam. The defendants have not demanded any property from the plaintiff. They have not encroached into any property of the plaintiff. The first defendant had borrowed an amount of Rs.25,000/- from the plaintiff. The first defendant executed sale deed no.2195/1985 in respect of 35 cents of property on condition that the property will be re-transferred at the time of return of borrowed amount. The plaintiff has filed the present suit as a ruse not to re-transfer the property. Hence it is requested to dismiss the suit with costs.

On these pleadings the court framed the following issues.

1. Whether the plaintiff is in possession of the plaint schedule property?

2. Whether the plaintiff is entitled to get a decree as prayed for in the suit?
3. Reliefs and costs?

4. On the date of trial, the plaintiff was present. He filed chief affidavit in lieu of examination in chief. The first defendant filed I.A.2/20 for joint trial of this case with O.S.9/14 and I.A.1/20 to remove the suit from the special list. Both the applications were dismissed vide separate orders. The plaintiff was examined as PW1. Exts.A1, A2, C1, C1(a), C2 and C2(a) were marked. The counsel for the defendants did not cross examine PW1. Evidence was closed and the case was posted for hearing and judgment. Then the plaintiff filed I.A.4/20 to re-open evidence by recalling PW1 and I.A.3/20 to receive a document. The applications were allowed. Ext.A3 was marked. Heard the counsel for the plaintiff. The counsel for the defendants did not adduce any arguments.

5. Ext.A3 is the sale deed no.2195/1985 dated 8-8-1985 of SRO, Mathilakam. Ext.A1 is the basic tax receipt. Ext.A2 is the electricity bill. Exts.C1 and C1(a) are the commission report and rough sketch. Exts.C2 and C2(a) are the commission report and survey plan. The evidence adduced by the plaintiff remains unchallenged and uncontroverted. From the unrebutted evidence adduced by the plaintiff, I find that the plaintiff is entitled to the reliefs claimed.

6. In the result, the suit is decreed with costs. The defendants are restrained by a permanent prohibitory injunction from encroaching into the

plaint schedule property, taking possession of any portion of the same and obstructing the plaintiff in taking usufructs, peacefully possessing the plaintiff schedule property and transferring the same

(Dictated to the Confidential Assistant, transcribed and typed by her, corrected and pronounced by me in Open Court on this the 14th day of February, 2020.)

K. Shine,
Principal Sub Judge.

APPENDIX

Plaintiff's Exhibits:-

A1 - 11.05.2012 - Basic tax receipt
A2 - 26.06.2012 - Electricity Bill
A3 - 08.08.1985 - Sale deed no.2195/1985
of SRO, Mathilakam.

Defendants Exhibits:- Nil

Court Exhibits:-

C1 and C1(a) – 12.09.2012 - Commission report and rough sketch.

C2 and C2(a) -30.11.2013 - Commission report and survey plan.

Plaintiff's Witness:-

PW1 - Shanmughan

Principal Sub Judge.