

IN THE COURT OF THE MUNSIFF, KODUNGALLUR.

Present:- Smt.Karthika.K., Munsiff.

Thursday, the 04th day of July, 2024/ 13th Ashadam, 1946.

O.S.1645/2017

Plaintiff:-

Bharathan, Aged 65 years, S/o.Kakkanatt Gopalan,
Edathiruthy Village and Desom, Kodungallur Taluk.

By Adv. T.M.Sabala

Defendants:-

1. Kochammu, Aged 72 years, W/o.Athikkott Ayyappakutty,
Edathiruthy Village and Desom, Kodungallur Taluk.
2. Premadas, Aged 45 years, S/o.Athikkott Ayyappakutty,
Edathiruthy Village and Desom, Kodungallur Taluk.
3. Shinoy, Aged 35 years, S/o.Athikkott Ayyappakutty,
Edathiruthy Village and Desom, Kodungallur Taluk.
4. Sheena, Aged 38 years, D/o.Athikkott Ayyappakutty,
Edathiruthy Village and Desom, Kodungallur Taluk.

Exparte

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

JUDGMENT

Suit is for fixation, recovery of possession and mandatory injunction.

2. **The plaint averments in brief is as follows:-** The plaint 'A' schedule property was purchased by the plaintiff vide sale deed No.1985/1995 of Thriprayar SRO. The defendants property is situated on the eastern and southern boundary of plaint 'A' schedule. The defendants

property is shown as plaint 'B' schedule. The defendants father Ayyappakutty originally have 15 cents of property and the said Ayyappakutty assigned 6.437 cents from the above 15 cents and the remaining 8.563 cents was obtained by the defendants vide succession. The 3rd defendant Shinoy who is the son of deceased Ayyappakutty purchased 3 3/4 cents abutting 8.563 cents . These two properties together shown as plaint 'B' schedule. There is no definite boundary between plaint 'A' schedule and plaint 'B' schedule. The plaint 'A' schedule is divided into five divisions out of which in 1,2 & 3 divisions the plaintiff has constructed a house and is living with his family. One division of the property near to the eastern road has a length of 60 feet and a width of 9 feet. Another set of plaint schedule property is situated on the south western side of the above said property it has a length of 30 feet on the east west side and 20 feet on the eastern side and 21 feet on the south north side. On the north eastern boundary of plaint 'A' schedule there is big pond which also falls into the property of the defendants. On the said portion on the southern side there is no definite boundary to demarcate the plaint 'A' schedule and 'B' schedule and also on the eastern side of plaint 'A' schedule there is no definite boundary to demarcate the plaint 'B' schedule and 'A' schedule. On 16.5.2017 the defendants placed a concrete posts encroaching into plaint 'A' schedule. Even though the plaintiff

informed the defendants to measure plaint 'A' and 'B' schedule and to fix the common boundary the defendants were not amicable for such a compromise. After filing the suit the plaintiff preferred a commission application and a commissioner was appointed with the assistance of a qualified surveyor to measure the entire plaint schedule property. After the measurement the commissioner was found that 1.450 cents of plaint 'A' schedule was encroached by the defendants. Hence the plaintiff is entitled to get recovery of possession on the strength of title of the said 1.450 cents of property. The common boundary of the plaint 'A' schedule and 'B' schedule has to be fixed and the defendants shall also be restrained by a decree of mandatory injunction from further trespassing into plaint 'A' schedule and removing the concrete posts installed in the plaint 'A' schedule property. Hence the suit.

3. The defendants filed written statement denying the entire plaint averments. The defendants pleaded that the plaint schedule properties are specifically identifiable. The extent and description of plaint 'B' schedule is also not correct. The defendants have no objection in measuring the property and fixing the boundary of plaint 'A' and 'B' schedule.

4. Based on the contentions raised by the defendants the following issues were framed by this court :-

1. Is the plaintiff entitled to get a decree for fixation of southern and eastern boundaries of plaint 'A' schedule property and if so, through which lines?
2. Is the plaintiff entitled to get a decree for mandatory injunction as prayed for?
3. Is the plaintiff entitled for a decree of possession of plaint 'C' schedule on the strength of title?
4. Order as to costs.
5. When the case was posted for trial in the special list, the defendants remained absent and set ex parte.
6. The power of attorney holder of plaintiff examined as PW1. She filed proof affidavit in lieu of examination in chief and Exts. A1 to A6, C1 & C1(a) documents were marked.
7. Heard.
8. Ext.A1 is the certified copy of sale deed deed No.1985/1995 of Thriprayar Sub Registry dated 24.8.1995 executed in favour of plaintiff. Ext.A2 is the certified copy of sale deed No.843/1978 of Thriprayar Sub Registry wherein Ayyappkutty who is the father of defendants 2 to 4 and husband of Ist defendant assigned 3 3/4 cents to third party. Ext.A3 is the

certified copy sale deed No.1244/1978 of Thriprayar Sub Registry wherein Ayyappkutty assigned $1 \frac{7}{16}$ cents to third party. Ext.A4 is the certified copy of sale deed No.781/1978 of Thriprayar Sub Registry wherein Ayyappkutty assigned $1 \frac{3}{4}$ cents to third party. Ext.A5 is the certified copy of sale deed No.778/1992 of Mathilakam Sub Registry. Ext.A6 is the power of attorney executed by the plaintiff in favour of his daughter, Indu dated 9.1.2024. Ext.C1 is the commission report filed by the commissioner dated 1.4.2019. Ext.C1(a) is the rough plan prepared by the commissioner to show the lay and lie of plaint schedule property. The plaintiff has proved his case from chief examination affidavit, Exts. A1 to A5 documents and Exts. C1 & C1(a) commission report and plan. The defendants did not adduce any contra evidence. The plaintiff's evidence is unrebutted. Hence the plaintiff has successfully proved his case before this court. Hence the plaintiff is entitled to get a decree as prayed for.

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

a) The southern and eastern boundary of plaint 'A' schedule which is the northern and western boundary of plaint 'B' schedule is fixed as per Ext.C1(a) commission plan. The eastern side of plaint 'A' schedule is fixed through the line 'GHIJKL' and the southern boundary of plaint 'A' schedule is fixed through the line 'J K'.

b) The defendants are hereby directed by way of a decree of mandatory injunction to install a permanent boundary on the northern side of plaint 'B' schedule and southern side of plaint 'A' schedule and to remove the concrete posts installed in plaint 'A' schedule.

c) The plaintiff is entitled to get recovery of possession of plaint 'C' schedule which is shown as 'D' plot in light green color in Ext.C1(a) plan on the strength of his title and the defendants shall hand over the possession of plaint 'C' schedule to the plaintiff within 3 months from the date of this decree.

d) If the defendants failed to obey the decree passed by this court the plaintiff is entitled to get the decree executed through the court of law with the help of an Amin and Adv.Commissioner to realise the costs thereof from the defendants personally and from their assets.

e) The defendants shall pay costs of the suit to the plaintiff.

(Dictated to the Confdl.Asst., transcribed by her, corrected by me and pronounced by me in open court on this the 04th day of July, 2024)

Sd/-
KARTHIKA.K.,
MUNSIFF.

APPENDIXPlaintiff's Exhibits:

- A1 - 24.08.1995- Certified Copy of Sale Deed No.1985/1995
of Thriprayar Sub Registry.
- A2 - - Certified Copy of Sale Deed No.843/1978
of Thriprayar Sub Registry.
- A3 - 20.10.1978- Certified Copy of Sale Deed No.1244/1978
of Thriprayar Sub Registry.
- A4 - - Certified Copy of Sale Deed No.781/1978
of Thriprayar Sub Registry.
- A5 - 15.04.1992- Certified Copy of Sale Deed No.778/1992
of Thriprayar Sub Registry.
- A6 - 09.01.2024- Power of Attorney

Defendant's Exhibits: - Nil.

Court Exhibits :

- C1 - 21.05.2022- Commission Report
- C1(a) - 21.05.2022- Plan

Plaintiff's Witness:

PW1 - 14.06.2024- Indhu

Defendant's Witness: - Nil.

Copied by: pn

Compared by:

/True Copy/

Id/-
MUNSIFF.
By Order

Junior Superintendent.