

IN THE COURT OF THE SUB JUDGE, NEDUMANGAD.

Present : Sri. Siji. N.N, 1st Additional Sub Judge, Thiruvananthapuram.

(In charge of Sub Judge, Nedumangad)

On Tuesday 09th January 2024

19th Pousha 1945

I.A 2/2023 in O.S 21/2023

PETITIONER/PLAINTIFF

The State of Kerala represented by the District Collector, Thiruvananthapuram, Civil Station, Kudappanakunnu P.O, Thiruvananthapuram.

By Adv. Dr. T. Geena Kumari (District Government Pleader and Public Prosecutor)

**COUNTER PETITIONERS/
DEFENDANTS**

1. M/s Southern Field Ventures Private Limited Company having registered Office at D-10, Panachikkal House, Tagore Nagar, Vazhuthacaudu, represented by its Managing Director Mr. Xavi Mano Mathew, aged about 64 years S/o John Mathew, D-10, Panachikkal House, Tagore Nagar, Vazhuthacaudu, Thiruvananthapuram-14.
2. M/s Jayashree Tea Garden Ltd, represented by its Managing Director having registered Office at "Industry house", 10 Camac Street, 15th Floor, Kolkotta-700717.

(By Advs. Sri. Shyam Sekhar. K.R, Adv. Anil P.V and Adv. S. Senthil Kumar)

This petition coming on for hearing on 06/12/2023 and having stood over for consideration to 09/01/2024 the court passed the following :-

ORDER

1. The above petition is filed by the plaintiff under Order XXXIX Rule 1 and 2 of CPC for an order restraining the respondents from transferring the plaint schedule property or create any document pertaining to it or committing any act of waste therein till the disposal of the suit.

2. The averments contained in the affidavit in support of the petition in short, are as follows:- The suit is one for declaration of title, recovery of mesne profits and other consequential reliefs. The plaint schedule property is owned by the petitioner. The petitioner is a trustee of the natural resources and public properties vested in the State of Kerala. The doctrine of public trust is applicable to the petitioner and duty bound to protect the property for general public. The Secretary to the Travancore Government for and on behalf of the Government and Revenue Department assigned the plaint schedule property along with other properties to one

Richard John Arthur Moore, a foreigner by virtue of document No.7099/1121ME dated 30/04/1946 for the cultivation of tea and coffee. There were 17 conditions in the document. The title of the properties retained by the State of Travancore. There is a direction in the document not to transfer the title and ownership of the property covered in the document.

3. On 08/04/1954, the said Richard John Arthur Moore had executed document No.1275/1954 in favour of 2nd respondent. It was an agreement to sell the plaint schedule property with another estate along with buildings, structures, plantations, machinery, trees and all other improvements with all the rights appurtenance there to. The said Richard John Arthur Moore had no right to transfer the property in favour of the 2nd respondent. The said document was illegal. He had not obtained permission from the authorities concerned to execute such a document.

4. On 30/03/2005, the 2nd respondent executed the sale deed Nos.7032/2005, 7033/2005 and 7034/2005 of SRO, Palode in faovur of the 1st respondent and thereby transferred the plaint schedule property to him. The 1st respondent has created some documents in favour of the Department for Space. He tried to create some documents pertaining to the plaint schedule property and commit waste in it. The Hon'ble High Court of

Kerala directed the petitioner to institute civil suits of declaration of title in similar cases. The respondents are well aware of the said fact. So, they are trying to create further documents. The respondents have no manner of right to transfer the plaint schedule property or commit any act of waste therein. Since the 1st respondent is trying to transfer the plaint schedule property and commit acts of waste therein, it is highly necessary to pass a temporary prohibitory injunction as sought for. Thus, the above petition.

5. The 1st counter petitioner filed counter affidavit contending as follows:- The suit as well as the injunction application is not maintainable either under law or on facts. The plaint does not disclose a cause of action against the respondents. The cause of actions stated was arised on 08/04/1954. The above suit is instituted after a long laps of 69 years. The suit is barred by Law of Limitation. When the main reliefs sought for in the plaint cannot be granted, there is no question of passing any interlocutory relief. Ever since the date of execution of sale deeds, the 1st respondent is in absolute possession and enjoyment of the plaint schedule property. Petitioner admitted the possession of the 1st respondent over the plaint schedule property. Since the petitioner has admitted possession and enjoyment of the plaint schedule property by the 1st respondent, an order of

injunction cannot be granted in favour of the petitioner. It is proved that the Maharaja of Travancore had assigned the plaint schedule property in 1946 by virtue of sale deed No.7099/1121ME. It is an out and out sale deed. The right, title, interest, ownership and possession over the plaint schedule property have been transferred to Mr. Richard John Arthur Moore for valid consideration.

6. The 2nd respondent purchased the said property on 08/04/1954 by virtue of sale deed No.1275/1954. The property was mutated in its favour. The 1st respondent purchased the plaint schedule property having an extent of 707.23 acres named Merchiston Tea Estate comprising Survey Nos.3995,4002,4010,4014,4018, 4019/2, 4020/3, 4020/4 of Thennur village (erstwhile Thelingamala village) by virtue of sale deed Nos.732/2005, 733/2005 and 734/2005 of SRO Palode. The 1st respondent engaged in agricultural activities and as a measure of developing its activities, it has purchased the plaint schedule property. It is having a rich heritage of more than 155 years which forms part of Travancore history. The 1st respondent effected mutation, in respect of 664.40 acres by Thandapper No.T.28. At the time of purchase of the plaint schedule property, there existed buildings, structures, plantations, plant machinery fixtures, trees and all other

improvements including pathways, easements, appurtenance. There were 296 small quarters with buildings, Dispensary, ration shop, church, mosque, temple were established at the expense of the predecessor in interest of the 1st respondent. Petitioner deliberately suppressed the said material facts from the court and obtained an order of injunction. It approached the court with unclean hands.

7. Out of 707.28 acers of land, an extent of 60 acers of land was notified as private forest vested with the Government under the Kerala Private Forest (Vesting Assignment Act) 1971. The said notification was challenged by the 2nd respondent with MFA No.652/189 and obtained a declaration that the said 60 acres does not fall within the definition of private forest. Meantime, the State of Kerala promulgated (Vesting and Management of Ecologically Fragile Lands) ordinance No.6/2000 dated 01/06/2000. The custodian wrongly notified 286.21 hectares of the property of 1st respondent as ecologically fragile land. The said ordinance was renewed up to 17/07/2001. Thereafter, there was no ordinance or Law in forces till 08/06/2005 when the Kerala Forest (Vesting and Managements of Ecologically Fragile Lands) Act, 2003 was notified in the gazette on 08/06/2005. There was no ordinance or Act on the date of purchase of the

plaint schedule property by the 1st respondent. The 1st respondent sold a portion of the estate having an extent of 32.93 hectares to Indian Institute of Science and Technology, Department of Space, Thiruvananthapuram by virtue of sale deed No.1416/2007 dated 20/07/2007.

8. On 03/10/2007, the RDO cancelled the thandapper No.T.28 in respect of 666.40 acres of land. The 1st respondent challenged the said notification by way of WP(C) Nos.27821/2007 and 3210/2008 before the Hon'ble High Court of Kerala. On 17/11/2014, the High Court directed the Custodian of ecologically fragile lands to decide the character of the land based on the application of the 1st respondent. On 05/01/2016, the Custodian on the basis of the report of the Expert Committee delivered its judgment with a specific finding and ordered that the land having an extent of 522.3639 acres should be removed from the ecologically fragile land and has included 57.389 hectares of land as ecologically fragile land. Custodian directed to restore the said 522.3639 acres of land to the 1st respondent by erratum notification dated 05/01/2016. The said erratum notification was published on 19/02/2019. The said finding was not challenged either by the Government or the Forest Department. Thus, the decision of the custodian, as far as 522.3639 acres of land has become final.

9. The 1st respondent as well as the Indian Institute of Space Science and Technology challenged the order of Custodian against the finding that 57.389 hectars of land comes under the purview of ecologically fragile land before the Kerala Forest Tribunal at Kollam by way of appeals as OA.No.1/2016 and 2/2016. The said appeals were allowed and found that an extent of 141.82 acres (57.389 hectares) of land is outside the purview of Ecologically Fragile Land. The Tribunal categorically found that 60.30 acres of land forms an integral part of the estate. The custodian of Forest and Ecologically Fragile Lands filed appeal before the Hon'ble High Court and the same is pending for consideration.

10. The order of RDO cancelled the Thandapper No.(T.28) was challenged before the District Collector Thiruvananthapuram, under Transfer of Registry Rules. It was dismissed on the ground that the Government is intending to file a civil suit declaring title over the plaint schedule property. On 27/11/2019, the department of Forest issued letter No.GIII 2506/2016 dated 27/11/2019 by stating that they have no claim or right over 211.4834 hectares of land and they confines their claim over 57.389 hectares of land only.

11. The petitioner did not challenge the title deeds with respect of plaint schedule property. It was not necessary for the Richard John Arthur Moore to obtain permission from Government of India or RBI to execute any document pertaining to the plaint schedule property. Moreover, he did not violate any provisions of FERA. The transfer of property in favour of space is valid. The Indian Institute of Space is a necessary party in the suit. The plaint schedule property is under the possession and enjoyment of the 1st respondent. The 1st respondent is facing huge financial crisis. Labours in the estate are on hunger strike for want of basic facilities and lack of amenities. Almost 150 labours and their family members are agitating in front of the estate. The petitioner faced multifarious litigations from 1971 onwards pertaining to the plaint schedule property. (The 1st respondent narrated the details of 22 cases between them.)

12. The petitioner has no prima facie case. The 1st respondent has not committed any act of waste in the plaint schedule property. It is shocking to learn that the petitioner had negotiated with Cycling Federation of India and granted permission to develop a portion of the plaint schedule property for making construction thereon without the permission of this Court. The petitioner has no title or possession over the plaint schedule

property. The conduct of the petitioner is apparently an abuse of process of this Court. Balance of convenience is not in favour of the petitioner. If injunction as sought for is granted, the respondent will put irreparable loss and injuries. The 1st respondent prayed to dismiss the above petition.

13. The following points raised for consideration:

1. Whether the petitioner has made out a prima facie case?
2. Whether balance of convenience is its favour?
3. Whether petitioner put irreparable loss and injuries, if an order of injunction as sought for is not granted?
4. Relief and Costs?

14. The documentary evidence consists of Exts.A1 to A9 and B1 to B10. I have heard the counsel for both sides and perused case records.

15. Point No.1 to 3:- These points are considered together for brevity. The original suit is one for the declaration of title, mesne profits and consequential reliefs. Petitioner is the State of Kerala. According to the petitioner, the plaint schedule property having an extent of 664.40 acers of land belongs to it. On 30/04/1946 the secretary to Travancore Kerala assigned plaint schedule property along with other properties to Richard

John Arthur Moore by virtue of Ext.A1 deed for tea and coffee cultivation. According to the petitioner, there were 17 conditions imposed in Ext.A1 deed for the enjoyment of the plaint schedule property. On 08/04/1954, the said Richard John Arthur Moore created Ext.A2 deed in favour of 2nd respondent. Richard John Arthur Moore had no valid title to transfer the plaint schedule property to the 2nd respondent. Thereafter, in the year 2005, the 2nd respondent sold the plaint schedule property to the 1st respondent by virtue of Exts.A3 to A5 sale deeds. Now the 1st respondent is trying to alienate and commit mischief in it. In fact, the plaint schedule property was entrusted to Richard John Arthur Moore only for cultivating tea and coffee. He had no right to alienate it. The Hon'ble High Court in WP(C) No.33519/2016 dated 07/11/2018 has given liberty to petitioner to approach Civil Court to establish its title over the plaint schedule property. Accordingly, the above suit has been instituted. If the 1st respondent alienates or commits mischief upon plaint schedule property, its value will be diminished and also cause multiplicity of proceedings. So, the 1st respondent may be restrained from alienating the plaint schedule property or committing any act of waste therein.

16. The 1st respondent, on the other hand, contended that Ext.A1 is a sale deed. It transfers all rights, interest, possession and title of the vendor to the vendee absolutely. Soon after the execution of Ext.A1 sale deed, the purchaser Richard John Arthur Moore became the owner in possession and enjoyment of the plaint schedule property. He had every right to alienate or encumber it. In the year 1954, the said Richard John Arthur Moore transferred the said property to the 2nd respondent by virtue of Ext.A2 sale deed. The 2nd respondent mutated the property in its favour. Ext.B1 is the copy of land tax receipt in the name of the 2nd respondent. Ext.B2 is the copy of possession certificate. The plaint schedule property was under the absolute ownership, possession and enjoyment of the 1st respondent till the execution of Exts.A3 to A5 sale deeds. Soon after the execution of Exts.A3 to A5 sale deeds, the 1st respondent became the title holder in possession and enjoyment of the plaint schedule property. He mutated it in his name. Exts.B3 to B5 are the land tax receipts pertaining to the plaint schedule property in the name of the 1st respondent.

17. According to the 1st respondent, the plaint schedule property is a tea estate named Merchiston Tea Estate. It has a history of more than 150 years. The estate consists of buildings, structures, plantations, plaint

machinery fixtures, trees and all other improvements including pathways, easements and appurtenants. There are 296 small quarters with buildings, dispensary, ration shop, church, mosque and temple are situating therein. The Government notified a portion of the plaint schedule property as a private forest. It was declared by the Hon'ble High Court on 12.09.1997 in MFA No.652/189 that the said land does not fall under the private forest. It was further declared that the said property forms part of tea estate. Thereafter, in the year 2000, the Custodian under the Kerala (Vesting and Management of Ecologically Fragile Lands) ordinance 2000 wrongly notified a portion of the plaint schedule property having an extent of 286.21 hectares as ecologically fragile land. The said notification was challenged and finally, it was held that the said property does not come under the purview of the ecologically fragile land. The said finding is challenged before the Hon'ble High Court. It is pending for consideration.

18. An order of temporary injunction is concerned, it is no part of the court's function, at that stage of the litigation, to try to resolve conflicts of evidence on affidavit as to facts of which the claims of either party may ultimately depend in order to decide difficult questions of law which call for detailed arguments and mature considerations. These are the matters to be

dealt with at the time of trial. The object of the interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he cannot be adequately compensated. To the plaintiff's need, any such need must be weighed against the corresponding need of the defendant, to be protected against injury, resulting from his having been prevented from exercising his own legal rights for which he cannot be adequately compensated.

19. In the present case, the plaint schedule property is an estate cultivated with tea and coffee. Petitioner admitted the possession of the 1st respondent over the plaint schedule property. There is no serious dispute that the plaint schedule property consists of buildings, structures, plantations, 296 quarters, dispensary, ration shop, church, mosque, temple etc. The predecessors in interests of the 1st respondent purchased the plaint schedule property in the year 1946. Thereafter, they have been in the absolute possession and enjoyment over it. Petitioner did not challenge the title of the plaint schedule property till the filing of the above suit. It is true that there was dispute with the forest department with respect to the plaint schedule property. Finally, as per Ext.B8 order dated 27.11.2019, the Divisional Forest Range Officer reported that the forest department has no

claim or right over an extent of 211.4834 hectares of property which is part of plaint schedule property.

20. Clause 11 of Ext.A1 deed discloses that the property covered in that deed was given in perpetuity. It further states that same are heritable or transferable. The said Clause in Ext.A1 document would, prima facie, shows that the vendor had transferred the plaint schedule property absolutely to the purchaser. The said document was executed in the year 1946. Now 76 years are over. Considering the above facts, I find, that the petitioner, prima facie, failed to establish its title or possession over the plaint schedule property. It can be safely concluded that the petitioner failed to make out the prima facie case in the above case. I stated earlier, the plaint schedule property is under the ownership, possession and enjoyment of the 1st respondent. If an order of injunction as sought for is granted, the 1st respondent can not enjoy the plaint schedule property peacefully and as of right. So, the balance of convenience is also not in favour of the petitioner. The facts and circumstances of the above case, I find that the petitioner will not put any irreparable loss and injury if the order of injunction as sought for is not granted. Petitioner is not entitled for any order as sought for. The above petition is liable to be dismissed.

Point No.4:- In the result, the above petition is dismissed. No order as to costs.

(Dictated to the Confidential Assistant, transcribed by her, corrected by me and pronounced in open court this the day of 9th January, 2024.)

SIJI. N. N.,

I Addl. Sub Judge, Thiruvananthapuram.

(In Charge of Sub Judge, Nedumangadu)

APPENDIX

Exhibits Marked from the side of Plaintiff:-

A1	03/04/1946	Attested copy of Document No. 7099/1121
A2	08/04/1954	Attested Copy of Document No. 1275/1954
A3	30/03/2005	Attested copy of Sale deed No. 732/2005 of Sub Registrar Office, Palode.
A4	30/03/2005	Attested copy of Sale deed No. 733/2005 of Sub Registrar Office, Palode.
A5	30/03/2005	Attested copy of Sale deed No. 734/2005 of Sub Registrar Office, Palode.
A6	--	Copy of Basic Tax Register of Thennoor Village.

A7	--	Copy of Thandapper Account Register of Thennoor Village.
A8	06/06/2019	Govt. Order No. 172/2019/ Revenue
A9	07/11/2018	Copy of Order in WP(C) No.33519/2016 of the Hon'ble High Court of Kerala

Exhibits Marked from the side of defendants :-

B1	22/10/2003	True Copy of Tax Receipt bearing No. 0456852.
B2	13/11/2003	True Copy of Possession Certificate in respect of the Plaint Schedule Property in the name of 2 nd defendant.
B3	02/07/2005	True Copy of the Tax Receipt by No. 22940
B4	10/07/2005	True Copy of Tax receipt by No. 12602
B5	19/04/2007	True Copy of Tax receipt by No. 8090
B6	05/01/2016	True Copy of order by No. EFL 10-1114/2007 of the Principal Chief Conservator of Forests and Custodian of ecologically fragile lands, Thiruvananthapuram.
B7	19/12/2019	True copy of the gazette notification issued by the custodian, ecologically fragile lands.
B8	27/11/2019	True Copy of Communication given by the department of Forest bearing No. G-32506/2016

B9	18/11/2021	True copy of the strike notice given by the General Secretary of CITU, informing 1 st defendant about the agitation within the estate.
B10	16/08/2023	True copy of the letter by No. GLR(LR)-117/2023.

Court Exhibits:-

NIL

Witness examined from the side of Plaintiff

NIL

Witness examined from the side of defendants

NIL

Witness examined from the side of Court

NIL

1st Additional Sub Judge, Thiruvananthapuram.

(In charge of Sub Judge, Nedumangad)

Typed by :BR

Compd by :

Copy of Order in
I.A.No.2/2023 IN O.S.No.21/2023
Dated: 09 -01-2024