

IN THE COURT OF THE MUNSIFF, ATTINGAL
PRESENT: SMT. SOORYA S. SUKUMARAN, LLB, MUNSIFF,
TUESDAY 12th NOVEMBER 2019/21st KARTHIKA 1941
ORDER IN IA 477/16 IN OS No. 96/2016

Petitioner/Plaintiff:-

Habeeba, D/o Abida Beevi, Sharmi Manzil, Kadinamkulam Panchayath
No.VII/326, Chittattumukku P.O, Kadinamkulam village.

By Adv:- A. Nissam

Counter petitioners/ Defendants:-

- 1 Sumayya, D/o Abida Beevi, 204/A V/759 Nazi Nivas, Kadinamkulam Panchayath, Kadinamkulam village
- 2 Ajna.R, W/o Shibu, Puthuvalpurayidam, Channankara, Kadinamkulam.
- 3 Hamsar, D/o Abdul Razaq, residing at do.....do.....

By Adv:- M. Althaf for D1

Adv R. Meenakumaran Nair for D2 and D3

This petition having been heard by the Court on 12/11/19 and on the same day the court passed the following.

JUDGMENT

This is a petition filed under Order XXXIX, Rule -1 of CPC.

2. The petition averments in brief are as follows:

Petitioner is the plaintiff in the suit. The suit is for injunction. The plaint schedule property belongs to the plaintiff by virtue of the sale deed No.1625/2010 of Kazhakkuttom SRO. It was executed by the 1st defendant. She got property on 17.08.2008 by virtue of sale deed No.2098/2008 of Kazhakkuttom SRO. After the execution of sale deed, on 18.10.2011 the plaintiff applied for effecting mutation in her favour. The revenue officials informed her that mutation cannot be effected as the property comprises in the category sarkar purambokku. So she complained to the additional Tahsildar, Thiruvananthapuram. The plaintiff is taking yield from

the plaint schedule property from the date of purchase. On 24.11.2015 the defendants 2 and 3 obstruct the plaintiff from entering into the plaint schedule property and claim title over same by virtue of sale deed No.2602/2013 executed by 1st defendant. On enquiry the plaintiff came to know that there was money transaction between the defendants. The defendants 2 and 3 claim the title over the property only in 2015 though their deed is in the year 2013. Further on 16.01.2016 the defendants 2 and 3 tried to obstruct the plaintiff from entering into the plaint schedule property. Hence she filed this petition.

3. The defendants 2 and 3 jointly filed objection contending as follows:

These defendants denied the title and possession of plaintiff over the plaint schedule property. They claim title over the property by virtue of sale deed No.2602/2013 of Kazhakkuttom SRO. They purchased the property from the 1st defendant for valid consideration. The sale deed relied by the plaintiff never came into force. Before the execution of sale deed in their favour the defendants conducted an enquiry and it is found that the property absolutely belonged to the 1st defendant. Plaintiff's husband, Hussain was one of the mediator for the sale of plaint schedule property to the defendants 2 and 3. Defendants purchased the property for a sum of 8.5 lakhs. From the date of execution they are possessing and enjoying the property. Moreover the plaintiff and her husband were participated in the registration of sale deed in favour of defendants at the sub registrar office. They denied the right of plaintiff over the property. Hence they prayed for the dismissal

of the petition.

4. The 1st defendant filed objection contending that she has executed the sale deed No. 1625/10 in favour of the plaintiff on 24.05.2010 as and thereafter the property is in the possession and enjoyment of the plaintiff. She denied the execution of sale deed in favour of the defendants 2 and 3.

5. Following points arise for consideration:

- (i) Whether the petitioner is entitled to get a temporary injunction, as prayed for ?
- (ii) Reliefs and costs.

6. Heard both sides.

7. **Point Nos.(i) & (ii):** The plaintiff claims title over the plaint schedule property by virtue of sale deed No.1625/2010. Ext.A1 is the original sale deed. Ext A1 was executed by the 1st defendant. Ext.A3 is the receipt of pokkuvaravu fees. Ext.A4 is the report of the Additional Tahsildar Office, Thiruvananthapuram dated 04.10.2022. By Ext.A4 the Additional Tahsildar ordered to effect mutation in favour of plaintiff. Ext.A2 is the certified copy of sale deed relied by the defendants 2 and 3.

The defendants 2 and 3 claim title over the plaint schedule property by virtue of sale deed No.2602/2013 of Kazhakkuttom SRO. Its copy is Ext.B1. Ext.B2 is the encumbrance certificate pertaining to the plaint schedule property. Ext.B3 is the receipt of pokkuvaravu fees. Ext.B4 is the copy of sale deed No.2095/2008 of

Kazhakkuttom, by which the 1st defendant got title over the property.

8. The plaint schedule property comprises in Sy.No.372/4-1 of Kadinamkulam village and has an extents of 2.02 Ares. Plaintiff claims title on the strength of Ext. A1 sale deed and defendants claim title on the strength of Ext B1 sale deed. Ext.A1 is a registered sale deed in the year 2010 and Ext B1 is a registered sale deed in the year of 2013. Ext.A3 prima facie shows that the plaintiff has taken steps for effecting mutation on 18.10.2011, which was prior to the date of execution of sale deed in favour of defendants 1 and 2. Admittedly both the deeds are executed by the 1st defendant. The 1st defendant specifically denied the execution of sale deed in favour of 2nd and 3rd defendants and contended that it is a fabricated one. Ext.B2 shows that, till 08.06.2013 the property was in the name of 1st defendant. It is well settled that the revenue records does not confer or taken away the title of properties. There is nothing on records to prima facie show that the defendants 2 and 3 have a valid title and possession over the property.

9. The main contention of the defendants 2 and 3 is that Ext A1 sale deed is fraudulently fabricated one. However, at this stage particularly the trial is said to be commenced it is difficult to hold that it is not a genuine one. The 1st defendant admits the execution of Ext A1 in favour of the plaintiff. She further submits that the property is in the possession of plaintiff from the date of deed. From the exhibits it is prima facie show that plaintiff has title and possession over the plaint schedule property. The plaintiff has a prima facie case. The balance of convenience

is also in favour of the petitioner. As the plaintiff has prima facie title and possession over the plaint schedule property withholding an injunction would cause irreparable injury to her. The three essentials of prima facie case, balance of convenience and irreparable injury are satisfied in this case. Hence the petition is allowed.

The defendants and her men are restrained from trespassing into the plaint schedule property or from obstructing the plaintiff from enjoying the property or committing any waste therein.

Dictated to the Confidential Assistant, transcribed and typed by her corrected and pronounced by me in open Court on this the 12th day of November, 2019.

SOORYA S. SUKUMARAN,
MUNSIFF

Appendix: -

Exhibits for the Petitioner:-

- A1 24.05.2010 Original sale deed No. 1625/2010
- A2 28.06.2013 Certified copy of Sale deed No. 2602/13
- A3 18/10/2011 Copy of Receipt of Pokkuvaravu fees
- A4 04/10/2011 Copy of report from Additional Tahasildar.

Exhibits for the Counter Petitioner:-

- B1 28/06/2013 Copy of sale deed No. 2602/13
- B2 11/12/2014 Encumbrance certificate
- B3 02/07/2013 Copy of receipt of Pokkuvaravu fees.
- B4 1705/2008 Copy of sale deed No. 2095/08

MUNSIFF

Typed by: Sofiya Beevi
Compared by:

