

IN THE COURT OF THE MUNSIFF, ATTINGAL
PRESENT SRI.RAJEEV.V, BS.c. LL.B, MUNSIFF
SATURDAY 25th NOVEMBER 2017/4th MAGASHEERSH 1939.

COMMON ORDER ON IA.982/17 IN OS.202/17 AND
IA.1446/17 AND IA.2233/17 IN OS.303/2017

Petitioner/Defendant

Muhammed Rafi, aged 61 years, S/o Late Noohu Kunju Vaidyan, Ansi Manzil, Pappala Junction, Pazhayakunnummel Village, Kilimanoor.P.O., Thiruvananthapuram Dist.

By Adv. V. Venugopalan Nair

Respondents/Petitioners

1. Hakkim, aged 45 years, S/o Badarudeen, Salman Manzil, Chenkikunnu, Kilimanoor.P.O., Thiruvananthapuram Dist.
2. Shahida Beevi, aged about 35 years, W/o Hakkim, Salman Manzil, Chenkikunnu, Kilimanoor.P.O., Thiruvananthapuram Dist.

By Adv. Bindu Ummer

OS.303/2017

Respondents/Petitioners

1. Shahida Beevi, aged about 35 years, W/o Hakkim, Salman Manzil, Chenkikunnu, Kilimanoor.P.O., Pazhayakunnummel Village, Thiruvananthapuram Dist.
2. Hakkim, aged 45 years, S/o Badarudeen, -do-do-

By Adv. Bindu Ummer

Defendants/Petitioners

1. Muhammed Rafi, aged 61 years, S/o Late Noohu Kunju Vaidyan, Ansi Manzil, Pappala Junction, Pazhayakunnummel Village, Kilimanoor.P.O., Thiruvananthapuram Dist.
2. M.R. Shajahan, aged 56 years, S/o Noohu Kunju Vaidyan, P.M. House, Pilimpathkonam, Mulakkalath kavu, Kilimanoor.

By Adv. V. Venugopalan Nair

This petition having been heard by the court on 25.11.17 and on the same day the court passed the following.

COMMON ORDER**I.A 982/2017:**

This is a petition filed by the plaintiff in O.S. 202/2017 Under Order 39 Rule 1 of Code of Civil Procedure praying to restrain the respondent from causing any obstructions or mischiefs in C schedule property affecting the pumping of water from the well situated in 'C' schedule property and from alienating C schedule property, pending disposal of the suit.

2. Petition averments in brief is as follows:

The suit is filed for a decree directing the second defendant to execute a sale deed in favour of the plaintiff with respect to the C schedule property and for a permanent prohibitory injunction restraining the defendants from causing any obstructions or mischiefs in the plaintiff C schedule property affecting the pumping of water from the well in C schedule property. Plaintiff A schedule property belongs to the plaintiffs and B schedule property is owned by the second defendant. Plaintiff C schedule is an extent of 1 cent with a right of way of 3 links connecting A schedule and C schedule and is a portion of B schedule property. During 2012, after constructing 2 tube wells in A schedule it was realised by the plaintiff that it was impossible to have drinking water in A schedule property. As drinking water is abundantly available in B schedule, plaintiff requested the defendants to provide him 1 cent property with a right of way from the adjacent B schedule, by way of sale, for the purpose of constructing an open well therein.

After several rounds of negotiations, on 03.06.2012, the defendants offered to sell C schedule property on certain conditions. The conditions were that the price of C schedule should be 1 lakh, that the plaintiff has to construct an 1 metre concrete way through the then existing rocky pathway to B schedule from MC road at the cost of the plaintiff and that the plaintiffs should permit the defendants also to take water from the proposed well. It was also agreed that the plaintiff will be at liberty to construct the well forthwith. But the sale deed will be executed only after the construction of the way to B schedule property. Though both the parties agreed to the above conditions, the said offer and acceptance did not reduce into writing due to the relationship between the parties. On 09.06.2016, the plaintiff and defendants openly fixed the location of C schedule as per the condition and the possession of the same was handed over the plaintiff. Thereupon the plaintiff entrusted the construction of the well in C schedule and the proposed way along with the construction of the building in A schedule, with a contractor. Thereafter, the well was dug in C schedule and the construction of the way for the defendant was stalled as two neighbouring persons filed an injunction suit against the defendants herein for restraining them from constructing the said way and have obtained a temporary injunction against such construction. The said suit was pending about 3 years and it was finally settled between the parties in a mediation. Subsequently, plaintiff constructed an one metre way through the very same contractor. But the execution of the sale deed

became indefinite because B schedule was mortgaged by the defendants in a co-operative Bank and they needed time for clearing the loan. In the meantime, defendants demanded a sale consideration of rupees 1 lakh pointing out some urgent need and accordingly, plaintiff provided the said 1 lakh rupees to the second defendant on 28.02.2015. Thus, only remaining formality was the execution of the sale deed. After digging the well in 2012, plaintiff erected a pump set for taking water to building in A schedule and the plaintiff has been using the same and pumping water from the said well to his building in A schedule. Though the plaintiff demanded several times for the execution of the sale deed, the defendants attempted to prolong the execution of the sale deed. During the extreme drought prevailing in Kerala the availability of water in the well at C schedule property was much reduced and hence the plaintiff decided to clean up the well and to deepen the said well a little more. Accordingly, on 16.03.2017, the plaintiff and his men went to C schedule and started the work. Then the defendants reached there and objected to the said work and told the plaintiff that they cannot give C schedule alone and if the plaintiff wants to have C schedule, the whole of the B schedule rocky land have to be purchased, which the plaintiff refused. Thereafter, the second plaintiff lodged a complaint before police to prevent the plaintiff pumping water from the well. Thereafter, the defendants have been threatening the plaintiff that unless the pipe line and pump are removed from C schedule they will cut and remove the same. Plaintiff was

informed from reliable sources that the defendants are attempting to sell the B schedule property including C schedule. Hence, the petition is filed praying to restrain the respondents from causing any kind of obstructions or mischiefs in C schedule property affecting the pumping of water from the well situated therein and from alienating C schedule property to anyone else pending disposal of the suit.

3. Vide order dated 26.04.2017, the Hon'ble Vacation Judge has granted an interim injunction to restrain the respondents from causing any kind of obstructions or mischiefs in C schedule property affecting the pumping of water from the well situated therein and from alienating C schedule property to anyone else.

4. The defendant appeared on notice and have filed written objections contending as follows:

The petition is not maintainable either on law or on facts. The petitioner has filed the petition twisting true state of facts. The respondents never agreed to sell C schedule property which is situated almost in the middle portion of the respondent's property. There is neither written nor oral sale agreement in this regard. C schedule is the one and only area wherein water source is available in the entire property. Without C schedule property the property of the defendant will be a barren land. The case set up by the petitioner is on the basis of a complaint filed by the respondent before the Kilimanoor Police. The petitioner

give much emphasis to a statement by an ordinary woman before police which does not convey the meaning properly. The attempt of the petitioner is to purchase the sole property of the respondent at a cheap price. The petitioner has been fetching water stating that the permission to fetch water is for an indefinite period. It was on these circumstances the respondent was constrained to approach the police. Hence, the respondent prays to dismiss the petition.

5. The point that arise for consideration in this petition is:

1. Whether the interim injunction dated 26.04.2017 need to be modified or set aside?

I.A.1446/2017 IN O.S.303/2017:

6. Petition averments in brief is as follows:

Petitioner is the first plaintiff in the suit which is filed for a permanent prohibitory injunction restraining the defendants from trespassing into the plaint schedule property, from fetching water from the well and from committing any waste. The petitioner is the absolute owner in possession of 64 ¼ cents of property in re-survey No.1/8 of Pazhayakunnummel village by virtue of sale deed No.1613/12 of Kilimanoor SRO. The defendants are the relatives of the husband of the plaintiff. The defendants approached the plaintiffs and made a request for fetching water from the well for a consideration of Rs.1,00,000/-. The condition of the agreement was that the defendants were permitted to construct a well inside the property of the plaintiff to fetch water for a period of 3 years on a total

consideration of Rs.1,00,000/- for the water. The plaintiffs were in need of money as they had to remove a huge rock for the smooth ingress and egress of their property. While so, two adjacent property owners instituted a suit restraining the plaintiffs from constructing the pathway as O.S.439/2012. The said suit was finally settled and by the time the period of 3 years agreed between plaintiffs and defendants expired. Even after the expiry of the period plaintiff used to fetch water indiscriminately. In such a situation the plaintiffs were constrained to approach the police and they lodged a complaint against the defendants. In the guise of the temporary injunction obtained in O.S.202/2017, the defendants have been fetching water from the well by using a motor pump and also attempted to restrain the plaintiff from entering into the property and fetching water from the well. The act of the defendant is in violation of the injunction order in O.S.202/2017. They have no right to restrain the plaintiffs from entering into the property to fetch water. On 14.07.2017, when the plaintiff and husband entered the property and tried to fetch water, the defendants and their henchmen threatened the plaintiff with dire consequences. The petition schedule property is highly essential for the beneficial enjoyment of the property. The first plaintiff is the absolute owner of the plaint schedule property. The first defendant produced no written document to prove that there exists a sale agreement between the parties. Hence, plaintiffs have a strong prima facie case and the balance of convenience is in their favour. Hence, the petitioners pray to grant a temporary

prohibitory injunction restraining the defendants and their men from trespassing into the plaint schedule property, fetching water from the well and from committing any waste. An interim order was passed on 20.07.17 restraining the defendants from trespassing into the plaint schedule property.

7. The defendant in O.S.303/2017 appeared on notice and have filed written objection contending as follows:

The petition is not maintainable either on law or on facts. The suit itself is one which has to be stayed u/s 10 CPC since O.S.202/2017 filed by the first defendant regarding the very same subject matter is pending trial. The Hon'ble Vacation Court has granted an interim injunction in favour of the defendants in this case. The petitioners who are the defendants in that case have not taken any steps to vacate the interim order. Without taking any such steps, they fraudulently filed another suit before this court restraining the respondents from pumping water from the well in C schedule in O.S.202/2017 which forms part of the plaint schedule herein. The petitioners managed to obtain a diametrically opposit and conflicting order in the subsequently filed IA in O.S.303/2017. Though the former order in O.S.202/2017 is in force even as on now, the respondents are prevented from enjoying the fruits of the same in view of the interim order passed in IA.1446/2017. There was an oral agreement between the parties for sale of 1 cent of property from the plaint schedule property for the purpose of digging the well. After several rounds of negotiations the petitioners have agreed to sell the C

schedule property in O.S.202/2017 on certain conditions. The agreed conditions were that the price of 1 cent will be Rs.1,00,000/-, the first plaintiff has to construct an one metre width pathway to the property of the petitioners from MC road at the cost of the first respondent and to permit the petitioners also to fetch water from the well. It was also agreed that the first respondent would be at liberty to construct the well forthwith but the sale deed will be executed only after the construction of the pathway as agreed. However, the construction of the pathway was deferred due to an injunction order passed in a case filed by two neighbours against the plaintiff herein and that case was settled in mediation. Subsequently, the first defendant constructed a way as agreed. However, the plaintiff herein has not executed sale deed as agreed. Accordingly, the defendants had filed O.S.202/2017 praying, inter-alia, to direct the plaintiffs herein to execute the sale deed. The petitioners herein approached the Court with unclean hands. They have filed the suit as a counter blast to the earlier suit. Hence, the respondents prays to dismiss the IA.

8. The points that arise for consideration in this petition is:

1. Whether the interim order dated 20.07.2017 in IA.1446/2017 need to be modified or set aside?

IA.2233/2017 IN O.S 303/2017:

This is a petition filed by the first defendant in O.S.303/2017 praying to vacate the order passed in IA 1446/2017.

9. The petition averments in brief is as follows:

I.A 1446/2017 was filed suppressing material facts. The petition is not maintainable either on law or on facts. The suit itself is one which has to be stayed u/s 10 of CPC in the light of pendency of O.S.202/2017. The order passed in I.A.1446/2017 in O.S.303/2017 is operating as opposite to the interim order in favour of the defendants in O.S.202/2017 passed by the Hon'ble Vacation Court. Hence, petitioner prays to vacate the order passed in IA 1446/2017 in O.S.303/2017

10. The point that arise for consideration in this petition is:

1. Whether the prayer in IA 2233/2017 is allowable?

11. Heard both sides.

12. All these petitions can be considered together since they revolve round the same question. For the sake of convenience the parties are referred to by their respective names. Mohammed Rafi is the petitioner in IA 982/2017 in O.S.202/2017 and Hakkim and Shahida Beevi are the respondents in that IA. Shahida Beevi and Hakkim are petitioners in IA 1446/2017 and respondents in IA.2233/2017. Mohammed Rafi and Shajahan are the respondents in IA 1446/2017 and Shajahan is the petitioner in IA 2233/2017.

13. **Point No.1 in IAs 982/2017 in O.S.202/2017,Point No. 1 in IA.**

1446/2017 in OS.303/17&Point No.1 in IA 2233/2017 in O.S.303/2017:

The documents produced by the petitioner in IA.982/2017 are marked as Ext.A1 to A3 and the documents produced by the petitioners in IA.1446/2017 are marked as Ext.B1 and B2. The commission report filed in O.S.202/2017 is marked as Ext.C1. Ext.A1 is the tax receipt in favour of Mohammed Rafi. Ext.A2 is the document obtained under the Right to Information Act, which is a copy of complaint filed by Shahida Beevi against Mohammed Rafi before the Sub Inspector of Police, Kilimanoor. Ext.A3 is the judgment in O.S.439/2012 dated 29.08.2014. Ext.B1 is the notarised copy of sale deed in the name of Shahida Beevi. Ext. B2 is the tax receipt in the name of Shahida Beevi. Ext.A2 shows that Shahida Beevi has filed a complaint before the police and it was stated therein that the petitioners in IA.982/2017 have demanded for 15 cents of property and that she has agreed to give only 1 cent. Though the counsel for the Shahida Beevi made an attempt arguing that the attempt of Shajahan is to mislead the Court by plucking out a part of the complaint by Shahida Beevi before the police, on going through Ext.A2 it can be seen that Shahida Beevi has asserted that she has agreed to give only 1 cent. It leads to the inference that there exists an agreement for sale of 1 cent of property. If there is no such agreement Mohammed Rafi will not opt to construct a well in Shahida Beevi's property. The case of Shahida Beevi is that Rs.1,00,000/- was agreed as consideration for fetching water for a period of 3 years. Considering the non availability of water in A schedule, and the requirement of water in flats at A

schedule it is not expected that Mohammed Rafi will stipulate a shorter period of 3 years for fetching water for a consideration of Rs.1,00,000/- as alleged by Shahida Beevi. In this context it is to be noted that the sale consideration noted in Ext.B1 for 64 ¼ cent is Rupees 25,30,000/-. Ext.B1 deed is dated 04.06.2012. In such a condition it is unbelievable that a person agreed to fetch water for a period of 3 years agreeing to pay an amount much more than the value of the land as seen in Ext.B1. Ext.C1 report states that a pipe line is connected in the well in C schedule property to the water tank in A schedule. The existence of a track towards B schedule from the road as reported in Ext.C1 shows that Mohammed Rafi has complied with his obligation to construct a pathway. Shahida Beevi herself has explained in her petition about the stay order which stood in the way of the petitioner in IA.982/2017 constructing the pathway. Considering the facts discussed above I am of the view that the balance of convenience is in favour of the petitioner in IA.982/2017. If the petitioner in IA.982/2017 is restrained from fetching water from C schedule property, that will badly affect the water supply to the residents in the flats in the A schedule property. Thus, I am of the view that the petitioner in IA.982/2017 has made out a strong prima facie case in his favour.

In the result, the interim order passed in IA.982/2017 in O.S.202/2017 is extended till the disposal of the suit.

IA.1446/2017 in O.S.303/2017 is dismissed.

I.A.2233/2017 in O.S.303/2017 is allowed and the interim order dated 20.07.2017 in IA 1446/2017 is vacated.

Dictated to the C.A, transcribed and typed by her, corrected and pronounced by me in Open Court on this the 25th day of November, 2017 .

Sd/-
RAJEEV.V
MUNSIFF

Appendix :

Exhibit marked for the petitioner

- A1- 03.11.16 Tax receipt
- A2- 03.04.17 Copy of complaint filed by Shahida Beevi
- A3- 29.08.14 Judgment in OS.439/12

Exhibits marked for the respondent

- B1- 04.06.12 Notarised copy of Sale deed
- B2- 29.04.17 Tax receipt

Court Exhibits

- C1- 26.04.17 Commission Report

Id/-
MUNSIFF

//True copy//

Typed by : Divya
Compared by :

MUNSIFF

