

IN THE COURT OF THE MUNSIFF, ATTINGAL
PRESENT: SRI. RAJEEV. V, B. Sc, LL.B, MUNSIFF
MONDAY 3rd SEPTEMBER, 2018/12th BHADRA 1940

ORDER ON I.A. 1495/2018 IN O.S. 325/2018

Plaintiffs:

1. Sadeekha Beevi, 50 years, D/o Salma Beevi, S.S.Manzil, Kunnukadu, Koithoorkonam, Kalloor Muri, Melthonnakkal Village
 2. Salim, 55 years, S/o Alikunju, S.S. Manzil, Kunnukadu, Koithoorkonam, Kalloor Muri, Melthonnakkal Village
- By Adv. D. Anil Kumar

Defendant:

Aseena, 45 years, W/o Ashraf, Darul Najath, Kunnukadu, Kalloor Muri, Melthonnakkal Village

By Adv. Madavoor G. Suresh Kumar

This petition having been heard by the court on 03/09/2018 and the court on the same day passed the following

ORDER

This is a petition filed u/O 39 Rule 1 CPC.

2. The petition averments in brief is as follows:

The petitioner is the first plaintiff in the original suit. Petitioner has obtained plaint A schedule property by virtue of Sale deed No.4069/2006 of Pothencode, SRO. While so, she has settled 1/2 of the said property in favour of the second plaintiff, who is none other than her husband, by virtue of Settlement deed No.1156/2009 of Pothencode, SRO. Plaint A schedule property is being enjoyed by the petitioner and the second plaintiff. There is a public road at the south-western corner of A schedule property, which is scheduled as B schedule road. There is an entrance having 2 and 1/2 metre width from the south-western corner of A schedule

property to B schedule road. On 17.07.2018 the defendant and her henchmen have attempted to close the entrance towards B schedule road. B schedule road is being used by the petitioner as well as her predecessors in interest. The defendant has no right to close the access to plaintiff A schedule property. If the entrance at the south-western corner of A schedule property is blocked, the petitioners will be deprived of the only access to their property. Hence, the petition is filed praying to grant a temporary injunction restraining the defendant from causing any obstructions to the entrance towards the B schedule pathway from A schedule property.

3. On 20.07.2018 an ex parte interim order was passed restraining the defendants from causing any obstructions to B schedule pathway till 20.08.2018. On 20.08.2018 the defendant has filed a written objection contending as follows:

The petition is not maintainable either on law or on facts. The pathway scheduled as B schedule belong to the defendant, her husband and his brother vide Sale deed No.1358/2002. Plaintiffs have no right over the B schedule property. There was specific provision for the plaintiffs for their access to the plaintiff schedule property. The same was also mentioned in deed No.1136/2009 by which the first plaintiff sold her property. The way provided is through the north-west corner of plaintiff A schedule property for access to their property. While so, on 15.07.2018, making use of the absence of the defendant in her property, the plaintiffs and their henchmen have demolished the compound wall at the northern side of the property of the defendant. When one of the relatives of the defendant tried to prevent the

plaintiffs, she was assaulted by the plaintiffs. Police have registered the crime relating to the said incident. There exists no pathway as described in B schedule. The alleged pathway is one fraudulently created by the plaintiffs by demolishing the compound wall of the property of the defendant. Hence, the defendant prays to dismiss the petition.

4. From the side of the petitioner, Ext.A1 and A2 were marked. From the side of the defendants Ext.B1 to B5 were marked. Ext.A1 is the copy of Settlement deed No. 1156/2009. Ext.A2 is tax receipt dated 02.07.2018. Ext.B1 is the photocopy of Sale deed No.1358/2002. Ext.B2 is the certified copy of deed No.4069/2006. Ext.B3 is certified copy of deed No.1136/2009 and Ext.B4 is a photocopy of the First Information Report in Crime No.939/2018 of Pothencode, Police Station. Ext.B5 series are certain photographs. The report and rough sketch produced by the advocate commissioner are marked as Ext.C1 and C1(a) respectively.

5. The points that arise for consideration in this petition are:

1. Whether the interim order dated 20.07.2018 in

IA.1495/2018 needs to be vacated, modified or made absolute ?

2. Reliefs ?

6. Heard counsel for the petitioner and the respondents on 20.08.2018.

7. **Point No.(1):** Ext.B3 is a Sale deed executed by the first petitioner in favour of one Hashim and Shakeela. It is specifically provided in Ext.B3 document

that a pathway was provided towards the west-north corner of the remaining property of the seller. It is clear from Ext.B3 that, there is a way existing for access to the property of the plaintiff at it's north-west corner. The report of the advocate commissioner and the rough sketch attached therewith assume significance. It is clearly reported by the advocate commissioner that a compound wall existed at the south-west corner of A schedule property was seen demolished. The advocate commissioner has also reported that the remnants of the compound wall were lying there. He has also reported that though there is a track from B schedule pathway to A schedule there was nothing to suggest that it was a permanent way towards a schedule property.

8. The report of the advocate commissioner that he had noted remnants of a compound wall demolished and Ext.B3 deed show that the plaintiff has not approached the Court with clean hands. Plaintiffs have suppressed the existence of another way as described in Ext.B3. The report of the advocate commissioner, who had visited the property after 8 days from the institution of the suit, states that the alleged access from A schedule to B schedule has only an age of about 2 weeks. It makes the case of the defendant that the alleged pathway was cut open by demolishing the existing wall, more probable. Hence, I am satisfied that the petitioner is not entitled for a temporary injunction as sought for, which is an equitable relief. Accordingly the interim order dated 20.07.2018 is vacated. Point is found accordingly.

9. **Point No.(2):** In view of the finding on point No.(1), the petition fails and is dismissed.

Dictated to the C.A, transcribed and typed by her, corrected and pronounced by me in Open Court on this the 3rd day of September, 2018 .

Sd/-
RAJEEV. V
MUNSIFF

Appendix:

Exhibits for the petitioners:

A1 22.04.09 Copy of settlement deed No.1156/09

A2 02.07.18 Tax receipt No.288359

Exhibits for the Counter Petitioner:

B1 Copy of sale deed No.1358/2002 dated 23/05/2002

B2 Certified copy of deed No.4069/2006

B3 Certified copy of deed No.1136/2009

B4 Photocopy of FIR in Crime No.939/2018 of Pothencodu Police Station

B5series Photographs 3 Nos.

Court Exhibits:

C1, C1(a) Commission Report and Rough sketch dated 08/08/2018

Id/-
MUNSIFF

//True Copy//

Typed by: Sakkeena Beevi

Compared by:

MUNSIFF

