

IN THE COURT OF THE MUNSIFF, ATTINGAL
PRESENT: SMT. SOORYA S. SUKUMARAN, MUNSIFF
MONDAY 18th JANUARY 2021/ 28th POUSHA 1942
COMMON ORDER IN IA 1/2020 IN OS No. 401/2020
AND IN IA 1/2020 IN OS No. 431/2020

IA 01/20 in OS.401/20

Petitioner/ Plaintiff:-

Shine, aged 50 years, S/o Devadasan, Padanilam House, Koonthalloor village, Chirayinkeezhu Desom, Chirayinkeezhu P.O, and Taluk

By Adv:- Sri.S. Anilkumar

Respondents/Defendants:-

- 1 Anill Kumar K.P, aged 50 years, S/o Krishnan, Kattil veedu, Puravoor, Koonthalloor village, Kizhuvilam Panchayath, Chirayinkeezhu Desom, Chirayinkeezhu P.O,
- 2 Sunil Kumar.H, aged 52 years, S/o Haridas, Nalini Vilasam, Perunguzhy P.O, Azhoor village, Muttapalam Desom Azhoor Panchayath, Chirayinkeezhu Taluk.

By Adv : Sri.A.S Naushad - for CP1

CP2- No representation

IA 1/20 in OS 431/20

Petitioner/Plaintiff:-

- 1 Anilkumar K.P, aged 51 years, S/o Krishnan, Kattil veedu, Puravoor, Koonthalloor village, Kizhuvilam Panchayath, Chirayinkeezhu, Desom, Chirayinkeezhu P.O, and Taluk, Thiruvananthapuram

By Adv:- A.S. Naushad

Counter petitioners/ Defendants:-

- 1 Sunil Kumar.H, aged 52 years, S/o Haridas, Nalini Vilasam, Perunguzhy P.O, Azhoor village, Muttappalam, Chirayinkeezhu Taluk, Thiruvananthapuram
- 2 Shine, aged 50 years, S/o Devadasan, Padanilam House, Koonthalloor village, Chirayinkeezhu Desom, Chirayinkeezhu P.O, and Taluk, Thiruvananthapuram

CP1 No representation

By Adv:- Sri.S. Anilkumar- for CP2

These petitions coming together for hearing 06/01/21 and the court on 18/01/21 passed the following.

COMMON ORDER

Both the petitions are filed by the plaintiffs in each cases.

I.A.01/2020 IN O.S. No.401/2020:

This is a petition filed under Order XXXIX, Rule -1 & 2 of CPC.

2. The petition averments in brief are as follows:

The petitioner is the plaintiff in the suit. The plaint schedule property belongs to the plaintiff by virtue of sale deed No.3552/2002 of Chirayinkeezhu SRO. It comprises in re-survey No.307/18 of Koonthallor village and has an extent of 3.10 ares. The plaint schedule property has clear boundaries on its four sides. The plaint schedule property lies on the western side of Attingal-Chirayinkeezhu public road. The property which lies on the immediate northern side of plaint schedule property belonged to the 2nd defendant. Recently he sold the property to the 1st defendant. The plaint schedule property and the northern property is separated in some portions with bricks foundation and in some portions with mud wall. The defendant has no right over the plaint schedule property. The plaintiff started construction of a residential building in the plaint schedule property with valid permission. In the heavy rain the rubble foundation on the western side of plaint schedule property was demolished. The 1st defendant tried to demolish the northern boundary of plaint schedule property alleging that part of his property was encroached and annexed to the plaint schedule property. Then he filed false

complaint against the plaintiff in panchayath and police. It was upon the instigation and influence of 2nd defendant. On 21.09.2020 the defendants tried to demolish the northern boundary of the plaintiff schedule property. On the timely intervention of the plaintiff and the people in the locality the defendants thwarted from their attempt. Again on 28.09.2020 the defendants tried to trespass into the plaintiff schedule property. The plaintiff apprehends that the defendants at any time will encroach into the plaintiff schedule property. Hence this petition is filed to restrain the defendants from trespassing into the plaintiff schedule property or demolishing its boundaries especially the northern boundary of the plaintiff schedule property and restrain the defendants from obstructing the constructions in the plaintiff schedule property.

3. The 1st defendant filed objection contending as follows:

The plaintiff schedule description is not correct. The plaintiff is not having any title, ownership or possession over the extent as described in the plaintiff. The vendor of the plaintiff had no right to give such an extent to the plaintiff. The lie and location of the property described is also not correct. This defendant's property lies on the immediate north of the plaintiff's property. The plaintiff is purposefully trying to destroy the boundary existing between the two properties. His intention is to trespass into the property of the 1st defendant and annex its portion into his property. An extent of 1.53 ares of property ie, 3.779 cents in re-survey No.307/18-1 of Koonthalloor village belongs to the 1st defendant by virtue of sale

deed No.216-1/2020 of Chirayinkeezhu SRO. He purchased the property from the 2nd defendant. After purchase the 1st defendant has effected mutation and paying tax. He is also having an extent of 80 sq.mtr (1.976 cents) in survey 307/19 of Koonthalloor village by virtue of settlement deed No.984/18 and release deed No.1031/18 both of Chirayinkeezhu SRO which lies on the southern side. Both the properties have well defined boundaries on all sides. Plaintiff owns only 3.790 cents of property in survey No.2425 of Koonthalloor village by virtue of sale deed No.3552/2002 of Chirayinkeezhu SRO. The properties of plaintiff and 1st defendant were owned by common owners, Mr.Mohandas and his wife Jalaja. They got property by virtue of sale deed No.2071/1997 of Chirayinkeezhu SRO. Firstly they sold 80 sq.mtr of property to the father of 1st defendant, Mr.Krishnan on 11.06.1998 by way of sale deed No,1728/1998. Thereafter, 1st defendant got title over that property by way of settlement deed No.984/2018 and release deed No.1031/2018. Secondly Mohandas and Jalaja sold an extent of 1.53 ares of property (3.77 cents) in re-survey 207/18-1 (old survey 2425/A/31) of Koonthalloor village to the 2nd defendant by virtue of sale deed No.3551/2002. Later 2nd defendant alienated the property to this defendant. Thereafter, they sold the remaining property to the plaintiff by virtue of sale deed No.3552/2002. The defendant has effected mutation and made improvements in the property. The plaintiff has an eye over the properties of the 1st defendant and demanded it on a meager price. The 1st defendant was not willing to the same. So the plaintiff is in enmity with the 1st defendant. The

plaintiff and 2nd defendant colluded each other and acting against this defendant. The 1st defendant has preferred complaint to the authorities. But they did not take action. Hence he constrained to file O.S.430/2020 against the plaintiff. The plaintiff filed this suit suppressing the material facts and he is not entitled to get any relief. Hence the petition is liable to be dismissed.

4. **I.A.01/2020 IN O.S.431/2020:**

The petition averments in brief are as follows:

This petition is filed by the plaintiff, who is the 1st defendant in O.S.401/2020 with the same averments that in the objection to the IA 01/2020 in O.S.401/2020. The plaint schedule property is owned and possessed by him by virtue of sale deed No.216/1.2020 of Chirayinkeezhu SRO. From the date of deed the property is in his possession and enjoyment. He has effected mutation and paying tax for the property. The defendants obstruct and interfere with the peaceful possession and enjoyment of plaintiff. Hence this petition is filed to restrain the defendants from trespassing into the plaint schedule properties or from demolishing and destroying its boundaries, from doing anything affecting the title, possession and enjoyment of the plaintiff over the plaint A and B schedule properties and also from committing any act of waste therein.

5. The 2nd defendant filed objection reiterating the contentions in the affidavit to the petition in I.A. 01/2020 in O.S.401/2020. He denied the averments in this petition and title of plaintiff over the property. He prayed for the dismissal of the

petition.

6. Based on the above pleadings, following points are raised for consideration:

- (i) Whether the petitioner in O.S.401/2020 is entitled to get an order of temporary injunction, as prayed for?
- (ii) Whether the petitioner in O.S.431/2019 is entitled to get an order of temporary injunction, as prayed for?
- (iii) Reliefs and costs. ?

7. The parties and the subject matter in both suits are same. Therefore both the petitions are considered together. For convenience the parties are referred as they are arrayed in O.S.401/2020.

8. Heard both sides. Commission reports are marked as Ext.C1 and C2 series.

9. **Point Nos. (i) & (ii):** For the sake of convenience and to avoid repetition these points are considered together. The plaintiff's case is that the defendant tried to trespass into the plaint schedule property and obstructed their possession and enjoyment over the same. Whereas the defendant contented that the plaintiff obstructed his possession and enjoyment over the property. Both the plaintiff and the defendant are disputing title and possession over a same portion of land lies in between the properties of plaintiff and defendant.

10. In both cases commissioners were deputed at the instance of plaintiffs therein. In the reports the commissioners located the properties of plaintiff and

defendant, but the lines shown as boundary of that properties are not admitted by the parties.

11. The title and possession of plaintiff and defendant over the disputed portion of land cannot be decided at this stage without taking evidence in this regard. But at the same time I feel that the non-interference by the court result irreparable injury to the parties seeking the reliefs. Further the parties need protection from the consequences of apprehended injury and dispossession. In such circumstances the parties can be directed to maintain status quo based on Ext.C1 and C2, commission reports. Thus Parties are specifically restrained from demolishing or altering the present boundaries existing in the spot. Upon hearing, the learned counsel for the defendant argued that they have no objection for the constructions of residential building in the property of plaintiff. So it is made clear that the construction of residential building in the property of plaintiff is not restrained by this order. Both petitions are disposed accordingly.

Dictated to the Confidential Assistant, transcribed and typed by her corrected and pronounced by me in open Court on this the 18th day of January, 2021.

SOORYA S. SUKUMARAN,
MUNSIFF

Appendix:-

Exhibits for both sides:- Nil

Court Exhibits

- C1 -05/10/20 - Commission report filed in OS 401/20 By Adv. Smt Silpa
C1(a) - 05/10/20 – Rough sketch appended with the commission report
C2 - 20/11/20 – Commission report filed in OS 431/20 By Adv:Smt.P.R.
Jyothi
C2(a) - 20/11/20 Rough sketch appended with the commission report.

Witness for both sides: Nil

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Id/-
MUNSIFF

\\True copy//

Typed by: Sofiya Beevi
Compared by:

MUNSIFF

