

IN THE COURT OF THE MUNSIFF, VARKALA
PRESENT Smt. REKHA LAURIAN, MUNSIFF
SATURDAY 24th JUNE, 2023/ 3rd ASHADAM, 1945
O S No. 309/ 2016

PLAINTIFF:-

Mohanlal, aged 46 years, S/o Pusharan, Varuvila
Veedu, Poothkulam desm, Poothakulam Village, now
residing at Sunil Nivas.

By Adv. Saabir F. Haq and Sheema Saabir

DEFENDANT:-

John Nirmal Thomas, S/o Joseph Thomas, Nirmal
Bhavan, Kedakulam Desom, Hariharapuram, Ayiroor
Village.

By Adv. Exparte

This Original Suit having been finally heard on 15/06/2023 and
Court on 24/06/2023 delivered the following.

JUDGMENT

Suit for declaration, fixation of boundary, recovery of possession and perpetual injunction

2. **Averments in the plaint are as follows:-** The plaintiff is the absolute owner of plaint A schedule property as per document no.2168/2014 of Varkala SRO. The said property was purchased from the defendant herein. The property of the defendant is described in plaint B schedule. Plaint A schedule property is situated to the western side of plaint B schedule. Previously, the property including plaint A schedule to a total extent of 25 cents belong to the defendant and out of that 6 Ares 7 sq.meter was given to the plaintiff as per the sale deed and a pathway was prescribed through the eastern side of the total extent of 25 cents starting from the panchayath road and extending through the southern side of plaint B schedule and reaching the south-eastern corner of plaint A schedule. The said way is having 3 meter width which is a motorable way and it is ensured in the title deed of the plaintiff. The said way is described in the plaint C schedule. The plaintiff and his family members are using plaint C schedule pathway

for their ingress and egress to plaint A schedule property. The said pathway is used from 08.09.1987. When plaint C schedule pathway is obstructed plaint A schedule property will be landlocked. The defendant assured the plaintiff that he should re-convey the property or else he will lodge false complaint against the plaintiff under the provisions of Kerala Money Lenders Act, 1958. Now the defendant is trying to encroach upon plaint A schedule property and to annex it to plaint B schedule property. He has also filed O.S.147/2016 seeking to set aside sale deed no.2168/2014 of Varkala SRO as null and void. The defendant is constantly trying to encroach upon plaint A schedule property and annex it to his property with the aid of some goondas. So, the plaintiff is under constant threat and is constrained to approach this court seeking relief.

3. **Defendant filed written statement contending as follows:-** The suit is not maintainable either in law or on facts. A close relative of the defendant Sri.Harison Robinson was in need of some urgent money and hence for this purpose he borrowed Rs.5,50,000/- from the plaintiff and so the defendant executed document no.2168 of Varkala SRO as security in favour of the plaintiff for and on behalf of

Sri.Harison Robinson. The said sale deed was registered as a nominal document. There was an oral agreement between plaintiff and Sri.Harison Robinson to pay monthly interest of Rs.22,000/-. Once the amount and interest is repaid the said document was to be re-conveyed. Even though plaint C schedule pathway is stated in the document it never came into existence. The said pathway is passing through the house where defendant and family is residing. The said document was executed only as a security for the financial transaction between the plaintiff and Sri.Harison Robinson. The possession of the property was not handed over to the plaintiff. Even though Sri.Harison Robinson and the defendant approached the plaintiff for paying the entire amount and for re-conveyance of the property the plaintiff demanded the said property for a total sale consideration of Rs.15,00,000/- which is much lesser than the total value of the property. He threatened to cut open a new pathway and so the defendant has given complaint to the City Police Commissioner, Kollam. The said complaint was forwarded to the CI of Police, Paravoor and the parties were summoned the police station and the CI had given warning to the plaintiff. After that the plaintiff had declared that he will encroach upon the property and establish his

right. So the defendant herein has filed O.S.147/2016 against the plaintiff herein and Sri.Harison Robinson. All the other allegations stated are false. The suit is having no cause of action and is liable to be dismissed.

4. When the case was listed for trial and when the plaintiff mounted the box and adduced evidence. The defendant and his counsel were absent and was not ready for cross-examination. Hence the defendant was set exparte.

5. On the basis of the aforesaid pleadings, the following issues were framed for trial:-

- 1. Is the plaintiff in possession of the plaint A schedule property ?*
- 2. Has the plaintiff got title over the plaint A schedule property?*
- 3. Is the plaintiff entitled to get a decree for declaration prayed for?*
- 4. Has the plaintiff got right of easement of necessity over plaint C schedule pathway?*
- 5. Has the plaintiff got right of easement by grant over the plaint C schedule pathway?*

*6. Is the plaintiff entitled to get a declaratory decree in respect of the
plaint*

C schedule pathway?

*7. Is the plaintiff entitled to get fixed the boundary in between the
plaint A*

and the plaint B schedule properties? If so, the correct line?

*8. Is the plain tiff entitled to get a decree for permanent prohibitory
injunction prayed for?*

9. What is the order as to costs?

6. From the side of plaintiff, **PW1 and PW2** were examined and **Exts.A1 to A10, Ext.C1, C1(a), Ext.C2 and C2(a)** were marked.

7. Certified copy of sale deed no.2168/2014 dated 19.06.2014 of Varkala SRO was marked as Ext.A1. Property tax receipt dated 07.08.2015 was marked as Ext.A2. Property tax receipt dated 17.05.2016 was marked as Ext.A3. Copy of possession certificate dated 18.05.2016 issued by Village Officer, Ayiroor village was marked as Ext.A4. Certified copy of order in I.S.1006/2016 in O.S.147/2016 was marked as Ext.A5. Copy of plaint in O.S.175/2016 was marked as

Ext.A6. Copy of affidavit in O.S.175/2016 was marked as Ext.A7. Copy of plaint in O.S.147/2016 was marked as Ext.A8. Copy of affidavit in O.S.147/2016 was marked as Ext.A9. Copy of plaint in O.S.136/2016 was marked as Ext.A10. Commissioner's report dated 01.09.2016 and rough sketch were marked as Ext.C1 and C1(a). Commissioner's report dated 19.12.2017 and rough sketch were marked as Ext.C2 and C2(a).

8. On going through the pleadings in the plaint along with proof affidavit filed by PW1, I am of the view that plaintiff has proved his case. There is no challenging evidence from the part of the defendants. The unrebutted evidence of PW1 establishes the cause of action for the reliefs sought. Accordingly the plaintiff is entitled to get a decree as prayed for.

In the result, suit is decreed with costs as follows:-

1. It is here by declared that the plaintiff has title and possession over plaint A schedule property.
2. Plaintiff shall be entitled to recover BCHG portion in Ext.C2(a) plan.

3. Let the boundary between property of plaintiff and property of defendant be fixed along the line HC as shown in Ext.C2(a) plan. The plaintiff shall be entitled to construct boundary wall through HC line and defendant shall equally share the cost of construction.
4. It is declared that plaintiff is entitled to easement by necessity over plaint C schedule pathway.
5. Defendant is hereby directed by way of decree of permanent prohibitory injunction from trespassing into plaint A schedule property or from doing any construction work by encroaching into plaint A and C schedule properties or obstruct plaintiff's easement right over plaint C schedule pathway or do any harm to the plaintiff's right and possession over plaint A schedule property.
6. Ext.C2(a) plan shall form part of the decree.

(Dictated to the C.A, transcribed and typed by her, corrected and pronounced by me in Open Court on this the 24th day of June, 2023)

REKHA LAURIAN
MUNSIFF

APPENDIX:**Exhibits for the Plaintiff:-**

A1.	19-06-2014	:	Certified copy of sale deed No. 2168/2014 of Varkala SRO.
A2.	07-08-2015	:	Tax Receipt No. 0244211 of Ayiroor Village.
A3.	17-05-2016	:	Tax Receipt No. 0623614 of Ayiroor Village.
A4.	18-05-2016	:	Copy of possession Certificate issued from Ayiroor Village.
A5.	23-05-2018	:	Certified copy of order in IA 1006/2016 in OS 147/2016 of Munsiff Court, Varkala.
A6.	12-04-2016	:	Certified copy of Complaint in O.S. 175/2016 of Munsiff Court, Varkala.
A7.	12-04-2016	:	Certified copy of Affidavit in OS 175/2016 of Munsiff Court, Varkala.
A8.	04-04-2016	:	Certified copy of Complaint in OS 147/2016 of Munsiff Court, Varkala.
A9.	04-04-2016	:	Certified copy of Affidavit in OS 147/2016 of Munsiff Court, Varkala.
A10.	12-04-2016	:	Certified copy of Complaint in O.S. 136/2016 of Munsiff Court, Varkala.

Exhibits for the defendant:- NIL**Court Exhibits:-**

C1, C1(a)-	01-09-2016	Commission Report and Rough Sketch prepared by Adv. Commissioner Smt. Nisha. P.S.
C2, C2(a)-	19-12-2017	Commission Report and Plan, prepared by Adv. Commissioner Smt. Nisha P.S.

Witness for the Plaintiff :-

PW1. 09-06-2023 Mohanlal. P.

PW2. 09-06-2023 Biju. V.

Witness for the Defendant:- NIL

MUNSIFF

Typed by : David. D

Com. by :

**COPY OF JUDGMENT IN O. S. No. 309/2016.
DATED: 24-06-2023.**