

IN THE COURT OF THE MUNSIFF, VARKALA
PRESENT: Smt. RAJASREE C.R, B.A.L, L.L.M, MUNSIFF
FRIDAY 1st FEBRUARY, 2019/12th MAKHAM, 1940.
OS.No. 648/2017

Plaintiffs:

1. Baby Sarojam, Aged 66 years, W/o Bhaskara Pillai,
Vaishnavam Veedu, Pazhayachantha, Ponganadu P.O.,
Kilimanoor. From Sree Vilasam Veedu,
Kizhakkanela P.O., Navaikulam Village, Varkala Taluk.
2. Bhaskara Pillai, Aged 79 years, S/o Kesava Pillai, of -do-

By Adv: Sri. S. Krishnakumar

Defendant :-

Mani, Aged 65 years, W/o Sreedharan Pillai,
Sree Vilasam Veedu. From Sreevinayakam Veedu,
Kizhakkanela P.O., Navaikulam Village,
Varkala Taluk.

Exparte

This original suit is having been heard on 09.01.2019 and the court on 01.02.2019 delivered the following:-

J U D G M E N T

Suit is for mandatory injunction, permanent prohibitory injunction and for damages.

2. Plaintiff averments in brief are stated as follows:- Plaintiff A and the plaintiff B schedule property originally belonged to the second plaintiff, who is the husband of the first plaintiff. The second plaintiff executed gift deed 1973/1976 of Navaikulam, SRO in favour of the first plaintiff. Since then, she is possessing the property and has mutated the

same. Plaintiff A property is lying in well defined boundaries. The old building situated in the plaintiff A schedule is scheduled as the plaintiff B schedule. Sreedharan Pillai was deputed to as the caretaker in respect of the plaintiff schedule property. After the demise of Sreedharan Pillai on 7/3/2012 the defendant asked the key of the plaintiff B schedule for performing some function. Sreedharan Pillai was the brother of the second plaintiff. The key of the plaintiff B schedule was handed over to the defendant and the second plaintiff returned to Canada on 28/3/2017. Even though the defendant agreed that she would hand over the key to the sister of the first plaintiff, she failed to do so. When the plaintiffs contacted the defendant, she assured that the key will be handed over to the plaintiffs when they will return to their hometown. On 24/5/2017 the plaintiffs came from their native place and demanded the key from the defendant. However, he failed to return the key. Thus, they were forced to take a rented house for their occupation. It was learned that the defendant took illegal possession of the plaintiff B schedule building and on 23/4/2017 the bathroom that was constructed outside the building was destroyed and cut and removed trees including the Mahogany tree that was standing in the plaintiff schedule property and thereby caused damages to the tune of Rs.5,00,000/- (Rupees Five Lakhs only). Even though the notice dated 12/10/2017 was received by the defendant, she failed to vacate the premises. On 10/11/2017, the defendant with her henchmen attempted to remove trees from the plaintiff schedule property. Thus, this suit is filed seeking mandatory injunction, permanent prohibitory injunction and for damages.

3. Even though summons was duly served on the defendant, she failed to appear. Thus, she was set ex parte.

4. On the side of the plaintiffs, the power of attorney holder of the plaintiffs was examined as PW1. Ext.A1 to Ext.A7, Ext.C1 and Ext.C1(a) were marked. Three witnesses on the side of the plaintiffs were examined as PW1 to PW4.

5. The power of attorney holder of the plaintiffs filed affidavit in lieu of his examination in chief reiterating the plaint averments. Ext.A1 produced by the plaintiffs would show that the plaint A schedule property was gifted to the first plaintiff by the second plaintiff. Ext.A2 would show that the first plaintiff is remitting land tax in respect of 58 Ares of land comprised in re-survey 198/6 of Navaikulam village. The evidence of PW1 would show that the plaintiffs are the owners of the plaint schedule and the defendant took illegal possession of the same. The plaintiffs deputed Sreedharan Pillai as the caretaker of the plaint A schedule property. After his demise, the defendant contacted the plaintiffs to get the key of the plaint B schedule building situated in the plaint A schedule property for performing some function in connection with the funeral of Sreedharan Pillai. Sreedharan Pillai was the brother of the second plaintiff. The key of the plaint B schedule was handed over to the defendant and the second plaintiff returned to Canada on 28/3/2017. Even though the defendant agreed that she would hand over the key to the sister of the first plaintiff, she failed to do so. On enquiry, the defendant assured that the key will be handed over to the plaintiffs when they will return to their hometown. On 24/5/2017 the plaintiffs came from their native place and demanded the key from the defendant. However, the defendant failed to return the same. According to PW1, the defendant cut and remove trees from the plaint A schedule property and also destroyed portion of the plaint B schedule building and thereby cause damages to the tune of Rs.5,00,000/- (Rupees Five Lakhs

only). PW1 examined PW2 who deposed that the defendant obtained the key of the plaint B schedule building for the funeral function of Sreedharan Pillai, the caretaker of the plaint A schedule property.

6. PW3 has also deposed that the key of the plaint B schedule building was received by the defendant for the funeral functions of Sreedharan Pillai and thereafter she failed to return the same and caused damage to the building. He corroborated the testimony of PW1 regarding the cause of action alleged on 23/4/2017. PW4 is the advocate commissioner who inspected the suit property and filed Ext.C1 report and Ext.C1(a) plan. The commissioner has noted the removal of trees from the plaint A schedule property and the demolition of portion of the building. It is pertinent to note that the testimony of PW2 and PW3 corroborates the ocular evidence of PW1. PW4 has also reported about the damages caused to the plaintiffs. Presently, there is no contra evidence to discard the testimony of PW1 to PW4. Having satisfied with the oral evidence on record, I am inclined to decree the suit in favour of the plaintiffs.

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

a. Defendant shall vacate the plaint schedule premises within 60 days from today. In case, if the defendant fails to do so, the plaintiffs can get the defendant evicted through due process of law.

b. Defendant, her men or agents are permanently restrained from trespassing into the plaint schedule property after handing over the vacant possession of the plaint A schedule property and the plaint B schedule building and she is permanently restrained from committing any acts of waste or damage in the plaint A schedule property and the plaint B schedule building.

c. Defendant shall pay an amount of Rs.5,00,000/- (Rupees Five Lakhs only) as damages that was caused to the plaintiffs by destroying the portion of the building and removing valuable trees from the plaint A schedule property.

d. Defendant shall pay the costs of this suit.

Dictated to the Confidential Assistant, typed by her, corrected and pronounced by me in open court, this the 1st day of February, 2019.

RAJASREE. C.R,
MUNSIFF

APPENDIX

Exhibits for plaintiffs :

A1	03.09.1976	Certified copy of Gift Deed No. 1973/76 of SRO Varkala.
A2	19.06.2017	Tax receipt No. 0392631 of Navaikulam Village.
A3	12.10.2017	Copy of Advocate notice
A4	18.11.2017	Postal Receipt
A5	18.11.2017	Acknowledgment Card
A6	17.11.2017	Special Power of Attorney executed by Baby Sarojam and Bhaskara Pillai in favour of Ramani Soman Pillai.
A7	01.09.2017	Copy of Rent Deed

Court Exhibits :

C1 & C1(a)	11.01.2018	Commission Report and Rough Sketch filed by Adv. D Anil Kumar.
------------	------------	--

Witness for Plaintiffs :

PW1	31.07.2018	Ramani Soman Pillai,
PW2	11.10.2018	Rajeev N
PW3	11.10.2018	Sundaresan Pillai
PW4	05.11.2018	D. Anilkumar

MUNSIFF

Typed by : Mercy

Compd.by :