

IN THE COURT OF THE MUNSIFF, VARKALA
PRESENT Smt. REKHA LAURIAN, MUNSIFF
THURSDAY 13th JULY, 2023/ 22nd ASHADAM, 1945
O S No. 468/ 2017

PLAINTIFF:-

1. Baby Sarojam, aged 66 years, W/o Bhaskara Pillai, Sreevilasom Veedu, kezhekkenela P.O., Navikulam Village, Varkala Taluk. Now residing at Vaishnavam Veedu, Pazhayachantha, Ponganadu P.O., Kilimanoor.
2. Bhaskara pillai, aged 79 years, S/o Kesava Pillai of ---do--do---

By Adv. Sri. S. Krishna Kumar

DEFENDANT:-

Mani, aged about 65 years, W/o Sreedharan Pillai, Sreevilasom Veedu, from Sreevinayakam Veedu, Kizhekkanela P.O., Navaikulam Village Varkala Taluk.

Exparte

This Original Suit having been finally heard on 12/07/2023 and Court on 13/07/2023 delivered the following.

JUDGMENT

Suit is for mandatory injunction

2. **Plaint averments in brief are stated as follows:-** Plaintiff A and B schedule properties belonged to the 2nd plaintiff. The 2nd plaintiff is the husband of 1st plaintiff. He executed gift deed no.1973/1976 of Navaikulam SRO in favour of the 1st plaintiff. Now plaintiff schedule property is in absolute title and possession of the 1st plaintiff. The plaintiff schedule property is having well defined boundaries. The plaintiffs are at present residing at Canada and they frequently visits the native place. Plaintiff B schedule building is situated in plaintiff A schedule property. The defendant is the wife of Sri. Sreedharan Pillai who is the brother of 2nd plaintiff. While the plaintiffs were abroad Sri. Sreedharan Pillai was entrusted to look after the property of the plaintiff. At that time Sri. Sreedharan Pillai and the defendants and their family were residing at Manaluvila house, Kizhakkanela and later at Sreevinayakam

house which is owned by Smt. Jayasree who is the daughter of Sri. Sreedharan Pillai. On 07.03.2012 Sri. Sreedharan Pillai died and the 2nd plaintiff came for his last rituals on 10.03.2012. Since the family members of Sri. Sreedharan Pillai expressed some inconvenience to conduct the burial in the compound of Sreevinayakam house, the 2nd plaintiff allowed to conduct the rituals and cremation in the property belong to him. Since the 2nd plaintiff had to return Canada they demanded the key of the house for conducting the rituals on the 41st day of the death of Sri. Sreedharan Pillai. For this temporary purpose the 2nd plaintiff gave the key of the house to the defendant. He returned to Canada on 28.03.2017. While returning he instructed the defendant to hand over the key of plaint B schedule building to his sister after the rituals of Sri. Sreedharan Pillai. But when the sister of the 2nd plaintiff demanded the key the defendant assured that she will look after the house and property. But when the plaintiffs returned on 24.05.2017 and demanded the key of plaint B schedule building the defendant was not ready to handover the key and raised unnecessary demands and did not handover the key of the house. So, the plaintiffs were constrained to reside in a rented house. The defendant is residing at Sreevinayakam

house belong to her daughter. When she got information about the arrival of the plaintiffs she trespassed into the house and demolished the bathroom that was being used by the plaintiffs. The plaintiffs gave a petition before the police and the police gave warning to the defendant. Even though the plaintiff issued a lawyer notice on 12.10.2017 and the defendant received it on 14.10.2017 she is not ready to vacate the house. The plaintiffs are entitled to a mandatory injunction and compensation for illegal use and occupation. Hence the suit.

3. Defendant filed written statement contending as follows-

The suit is not maintainable either in law or on facts. The entire averments in the plaint is false. When the plaintiff purchased the property Sri. Sreedharan Pillai and the defendant and their family were residing at Kottayam. In the year 1971 they returned to the native place. But since they could not reside in the family house they started residing at plaint B schedule building. The 2nd defendant went abroad. From that time onwards the plaint schedule property and building is in the possession of defendant and her family. On 03.09.1976 the plaintiffs came to India and demanded to vacate the house. The defendant expelled the plaintiff from the house and from that day onwards the

defendant and her husband were residing in the plaint schedule property against the will of the plaintiffs. They acquired ownership over the property by adverse possession. So the plaintiffs are not having any right over the property. The plaintiffs are settled at Canada. The house have been renovated by Smt.Sreedevi who is the daughter of the defendant after spending about Rs.8,00,000/-. The defendant and her family are residing at the said house. The defendant and her family are having absolute right and possession over the property. They have fabricated documents to expel the defendant and her family from the house. The plaintiffs are having no cause of action. Hence the suit is liable to be dismissed.

4. When the case was listed for trial the defendant remained absent. The learned counsel for the defendant was not ready to cross-examine the plaintiff. Hence the defendant was set exparte.

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

1. Is the suit is barred by limitation?
2. Whether the defendant has perfected his title by adverse possession

over the plaint schedule property and building situated therein ?

3. Whether the plaintiff is entitled to get a mandatory injunction as prayed for?

4. Whether the plaintiff is entitled to get a permanent prohibitory injunction as prayed for?

5. Whether the plaintiff is entitled to get solatium of Rs.5,00,000/- from the defendant?

6. Is the plaintiff entitled to get an amount of Rs.10,000/- each for use and occupation from the defendant?

7. Relief and costs ?

6. **Issue nos.1 to 7:-** On the side of the plaintiff, power of attorney holder of the plaintiffs was examined as PW1 and Exts.A1 to Ext.A8, Ext.C1 and C1(a) were marked. PW1 filed affidavit in lieu of her examination in chief reiterating the plaint averments. Copy of gift deed no.1973/1976 of Navaikulam SRO was marked as Ext.A1. Property tax receipt dated 19.06.2017 was marked as Ext.A2. Copy of advocate notice was marked as Ext.A3. Postal receipt was marked as Ext.A4. Postal

acknowledgment card was marked as Ext.A5. Power of attorney executed by the plaintiffs in favour of PW1 was marked as Ext.A6. Copy of ownership certificate issued by Navaikulam Grama Panchayath dated 30.06.2013 was marked as Ext.A7. Copy of possession certificate issued by Village Officer, Navaikulam dated 05.07.2023 was marked as Ext.A8. Commissioner's report and rough sketch was marked as Ext.C1 and C1(a). Presently, there is no contra evidence to discard the evidence of PW1. As the documents produced would substantiate the testimony of PW1, I am inclined to believe PW1 and to decree the suit in favour of the plaintiff.

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

a. Defendant shall vacate the plaint schedule premises within 30 days from date of judgment. 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, transcribed and typed by her, corrected and pronounced by me in open court, this the 13th day of July, 2023).

**REKHA LAURIAN
MUNSIFF**

APPENDIX:

Exhibits for the Plaintiffs:-

- | | | | |
|-----|------------|---|---|
| A1 | 03-09-1976 | - | Copy of Gift Deed No. 1973/1976 of Navaikulam S R O. |
| A2. | 19-06-2017 | - | Property Tax Receipt No. 0392631, Navaikulam, Village Office. |
| A3. | 11-10-2017 | - | Copy of Advocate Notice. |
| A4. | | - | Postal Receipt |
| A5. | | - | Postal Acknowledgment Card. |

- A6. 18-11-2017 - Power of Attorney.
- A7. 30-06-2023 - Copy of ownership Certificate issued by Navaikulam grama Panchayath.
- A8. 05-07-2023 - Copy of Possession Certificate issued by village officer, Navaikulam.

Exhibits for the Defendant -Nil

Court Exhibits:-

- C1, C1(a)- 04-01-2018 Commission Report and Rough Sketch prepared by Adv. Commissioner D. Anilkumar.

Witness for the Plaintiff :-

- PW1 12-07-2023 - Remani Soman Pillai

MUNSIFF

**COPY OF JUDGMENT IN O. S. No. 468/2017.
DATED: 13-07-2023.**