

IN THE COURT OF THE MUNSIFF, VARKALA
PRESENT SMT REKHA LAURIAN , MUNSIFF
WEDNESDAY 25th JANUARY 2023/ 5th MAGHA, 1944

OS 349/2019

PLAINTIFFS:-

1. Sobhana, aged 70 years, W/o Raghavan,
Subhodhini Mandiram, Vedan Vila,
Manamboor Village and desom.

Addl.P2:- Subhash Chandra Babu, aged 55 years
S/o Dharmarajan, Subhodhini Mandiram,
Vedan Vila, Manamboor Village and desom.

Addl.P3:- Subhodhini, aged 50 years, W/o Subhash
Chandra Babu of do-do.

(Defendants 2 and 3 are transposed as the addl. Plaintiff 2 and 3 as per the order on IA 02/2022 dated 07/12/2022). (Addl. Plaintiffs 2 and 3 are represented by the Power of Attorney holder Johnson Joseph, S/o Joseph Pereira, Edavila Veedu, Kottappuram Village as per order in IA 01/2022 dated 07/12/2022).

By Advocate Sri. H. Sumanas

DEFENDANTS:-

1. Saji aged 57 years, S/o Dharmasalan, T.S. Bhavan,
Thottikkallu, Manamboor desom and Village.

2. Subhash Chandra Babu, aged 55 years,
S/o Dharmarajan, Subhodhini Mandiram,
Vedanvila, Manambor Village and desom.
3. Subhodhini aged 50 years W/o Subhash Chandra
Babu of -do- do-

(D2 and D3 are transposed on addl. Plaintiff 2 & 3 as per the Order on IA 02/2022 dated 07/12/2022).

Ex-parte

This original suit having been finally heard on 07/01/2023, and the court on 25-01-2023, delivered the following:

JUDGMENT

This suit is for permanent prohibitory injunction.

2. **Plaint averments in brief are stated as follows:-**

Plaint A schedule property belongs to 3rd additional plaintiff as per partition deed no.59/2016 of Kavalayoor SRO. It is mutated in the name of additional 2nd and 3rd plaintiffs. Since 2nd and 3rd plaintiffs are abroad, 1st plaintiff who is the mother of 3rd plaintiff is in possession of the property. Life interest is assured for the 1st plaintiff. To the north-eastern side of plaint A schedule property is

the property of 1st defendant which is described in plaint C schedule. There is a pathway leading to plaint C schedule through the outward portion of the northern boundary wall and barbed iron fencing which is 70 cm in width. Certain portion of plaint A schedule property was left out while constructing the said pathway. It is scheduled as plaint B schedule. The 1st defendant is having no right over plaint A schedule property. Plaint A schedule property is having well defined boundaries. On the northern side there is a boundary wall over 20 years old leading to the eastern side there is an iron fencing about 20 years old. Now the defendant is trying to encroach upon plaint a schedule property and to widen B schedule pathway. On 12.10.2019 the defendant demanded the plaintiff to increase the width of the pathway to 4.5 meter or else he will demolish the boundary and widen the pathway using JCB at the midnight. He also issued an advocate notice raising false and frivolous contentions. On 20.10.2019 at 8 am the defendant along with his henchmen came with spade, pickax and chopper and tried to demolish the northern boundary

of plaint A schedule property to widen plaint B schedule pathway. Since the plaintiff and neighbours interfered, they retreated. But the defendant threatened that he will bring JCB and demolish the boundary wall. The plaintiff is not in a position to obstruct the illegal activities of the defendant. Hence the suit.

3. Though summons was duly served on the defendant, he failed to appear. Thus, he was set ex parte.

4. On the side of the plaintiff, the power of attorney holder of additional plaintiffs 2 and 3 was examined as PW1 and Exts.A1 to Ext.A3, Ext.C1 and C1(a) were marked. PW1 filed affidavit in lieu of his examination in chief reiterating the plaint averments. Copy of partition deed no.59/2016 of Kavalayoor SRO was marked as Exts.A1. Tax receipt dated 17.10.2019 was marked as Ext.A2. Power of attorney was marked as Ext.A3. Commissioner's report and rough sketch were 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 plaintiffs.

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

- a. The defendant and his men are restrained by a decree of permanent prohibitory injunction from trespassing into plaintiff A schedule property and not destroy the northern compound wall and barbed fencing and other boundaries and increase the width of plaintiff B schedule pathway by encroaching plaintiff A schedule property and from causing any damages to plaintiff A schedule property.
- b. Defendant do pay the costs of this suit.
- c. 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 25th day of January, 2023).

Sd/-
REKHA LAURIAN,
MUNSIFF

Appendix:-

Exhibit for the Plaintiff :-

- A1. 20-01-2016 : Certified copy of Partition deed
No. 59/2016 of Kavalayoor SRO.
- A2. 17-10-2019 : Tax Receipt No. KL01060807855/2019
of Village office, Manamboor.
- A3. 06-06-2022 : General Power of Attorney.

Exhibits for the defendant : NIL

Court Exhibits

- C1 and C1 (a) -- 07-04-2021 : Commission Report and Rough
Sketch prepared by the Advocate
Commissioner for G. Krishna Kumar.

Witness for the Plaintiff:-

- PW1 07-01-2023 : Johnson Joseph (Power of Attorney
holder of 2nd and 3rd Plaintiff)

Witness for the Defendant : NIL

**Id/-
MUNSIFF**

// True copy //

MUNSIFF

*Typed by : David. D
Com. by :*

**COPY OF JUDGMENT IN O.S.349 /2019,
DATED: 25-01-2023.**