

IN THE COURT OF THE MUNSIFF, VARKALA
PRESENT : Smt. REKHA LUARIAN, MUNSIFF
FRIDAY 12th APRIL, 2024
IA 1/2024 IN OS NO. 346/ 2023

PETITIONER/ PLAINTIFF:-

Rafeeka Beevi, age 82 years, D/o Ismail pillai, Rahim manzil,
Ayiroor, Trivandrum

By Adv. Sureshkumar

COUNTER PETITIONERS/ DEFENDANTS:

1. Mehja, aged 65 years, W/o Ansari, Mehja Manzil, Ayiroor, Thiruvananthapuram.
2. Jesna, aged 35 years, D/O Ansari, Kayil Jasnalayam, Vettoor.
3. Anvar, aged 58 years, S/o Shahul Hameed, A.R Residency, Ayiroor, Thiruvananthapuram.

Adv. D1, D2- A. Ramees Beevi

Adv. D3- N. Santhosh Kumar.

This petition having been heard on 12/04/2024 and the court on the same day passed the following:

ORDER

This application is filed under Order XXXIX Rule 1 and Section 94 Code of Civil Procedure, 1908.

2. **Application averments in brief are stated as follows:** - The petition schedule property belongs to the petitioner. It is having well defined boundaries. The petitioner is seeking temporary injunction against the respondents from trespassing into the petition schedule property. The respondents are relatives of the petitioner. On 10.03.2023 at 8 am the respondents and men trespassed into the petition schedule property and put up an iron fencing in the eastern side of petition schedule property in north-south direction. On 11.03.2023 the petitioner gave a complaint to Ayiroor police. But no action was taken by the police. The petitioner apprehends that the respondents will encroach upon the property at any time. Hence the petition.

3. **Respondents 1 & 2 filed objection contending as follows:-** The injunction application is not maintainable either in law or on facts. The petition schedule property does not belong to the petitioner. She is not having ownership or possession over the property. The property as scheduled in petition A schedule is not present in the location. The description of petition B schedule is also not correct. There is no clear

boundaries between petition A and B schedule properties. Respondents have never tried to encroach upon petition schedule properties. The averment that they are relatives is true. All the other averments are false. There had been no occurrence on 10.03.2023 as stated. The 1st respondent obtained 16.60 Ares of property in survey 3175 and 1.62 Ares in survey 3170 as per gift deed no.6/1981 of Varkala SRO dated 01.01.1981. It lies as a single compact unit. It is in possession of the 1st respondent. The 1st respondent gave the said property to 2nd respondent her daughter as per settlement deed no.3874/2007 of Varkala SRO. The 2nd respondent has constructed granite foundation and had put up barbed iron fencing. To the eastern side of 1st respondent's property is 45 cents of property belonging to her brother. There is clear boundary between the properties. To the northern side is the paddy field and is 5 feet below the property of the respondents. Between the southern road and the respondents' property is iron fencing. Respondents are not having 64 cents of property. After resurvey they are having only 43 cents of property in resurvey 197/13 of Ayiroor village. To the western side of the said property is the property in resurvey 197/12. The petitioner is having no ownership over the property in resurvey 197/12. The cause of action stated is false. The 2nd respondent was abroad on 10.03.2023 and 1st respondent is a retired teacher and a senior citizen. After executing settlement deed in favour of the 2nd respondent the basement was

constructed and iron fencing was put up. So, there is no need to put up new iron fencing. On 25.01.2024 due to a road traffic incident the iron fencing on the southern and western side was partly destructed. Complaint was given to police station. The son of the petitioner Sri. Nahas tried to trespass into the property of 2nd respondent. Then respondents had given complaint to Ayiroor police and Varkala Taluk Office. Petitioner is having no cause of action. The balance of convenience is not in favour of the petitioner. She has approached the court with unclean hands. Hence the petition may be dismissed with costs.

4. **The 3rd respondent filed objection contending as follows:** - The petition is not maintainable either in law or on facts. It is stated in the petition that the petitioner has 1 Acre 2 cents of property in old survey No. 3175 and her husband has 67 cents in old survey No. 3175 and now she is in possession of 10.60 Ares of property and some property had been alienated. But it is not stated how much property has been alienated or to whom. No documents are also produced. The petitioner was having 51 Ares of property. But 51 Ares of property are now in ownership of strangers. Now the petitioner Smt.Rafeeka Beevi is not having ownership or possession of property therein. The persons who are in possession of property are not made parties to the suit. So the prayer to demarcate the boundaries and to fix the boundaries is not maintainable. She has produced the document

showing that she is having 2 Acres 2 cents of property. But as per village records 1 Acre 30 cents property had been alienated. The averment that the petitioner's property is having well defined boundaries is not correct. To the western side of 3rd respondent's property is the property of 1st and 2nd respondents. There is clear boundary between the two properties. To the western side of the property of 1st and 2nd respondents' property is a granite basement and above that there is iron fencing. The petitioner is having no property adjacent to the property of the 3rd respondent. On 13.06.2022 Taluk Surveyor had measured the property and on 06.12.2022 survey stone had been implanted. Now the petitioner is having no property in her ownership. The averment that on 10.03.2023 the respondent had put up iron fencing is false. There was already existing old granite foundation and iron fencing. There is no balance of convenience in favour of the petitioner and the petition is liable to be dismissed.

5. Heard both sides.

6. Points that arose for consideration are:

1. Has the applicant shown a prima facie case in his favour?
2. Does the balance of convenience lie in favour of the applicant?
3. Whether refusal to grant injunction would cause irreparable injury to the applicant?
4. What is the order as to costs?

7. From the side of the petitioner Exts.A1 to A8 were marked. From the side of the respondents, Exts.B1 to B4 were marked.

8. **Point Nos.1 to 3 :-** According to the petitioner she is in ownership and possession of 10 Ares 60 sq.meter of property in resurvey 197/12. The respondents are having property in resurvey 197/13. They are trying to trespass into her property and put-up fencing. Hence, she is seeking injunction against the respondents. From the side of the petitioner 8 documents were marked. Ext.A1 is the certified copy of settlement deed No. 2931/1958 of Varkala SRO. Ext.A2 is the certified copy of sale deed No. 5471/1966 of Varkala SRO. Ext.A3 is the tax receipt dated 06.03.2012 pertaining to 10 Ares 60 sq.meter of property in resurvey 197/12 in favour of the petitioner, Ext.A4 is the field sketch of resurvey 197 of Ayiroor village. Ext.A5 is the certified copy of resurvey plan of field no.197/12 of Ayiroor village. Ext.A6 is the notice in Form no.6 issued to Mohammed Nahas, S/o K.S.Abdul Rahim, Rahim Manzil, Ayiroor P.O. Ext.A7 is the receipt issued from Taluk Office, Varkala in favour of Mohammed Nahas. Ext.A8 is a document issued to Sri.Mohammmed Nahas under the provision of R.T.I Act. Respondents' case is that the petitioner is not in possession of 10 Ares 60 sq.meter of property as averred. No document pertaining to her ownership and possession is produced. Further petition B schedule is also wrong. The respondents 1 and 2 are having no property to an extent of 64 cents. They

are having only a lesser extend of property. There had been no cause of action in favour of the petitioner. Ext.B1 is the settlement deed executed by the 1st respondent in favour of 2nd respondent regarding her property to an extend of 45 cents in resurvey 197/13 of Ayiroor village. Ext.B2 is the tax receipt of the 2nd respondent for 17 Ares 40 sq.meters of property in resurvey 197/13. Ext.B3 is the document regarding the ownership and possession of the petitioner obtained from Ayiroor village office as per the provisions of R.T.I.Act. Ext.B4 is also obtained as per the provisions of R.T.I Act regarding the property in resurvey 197.

9. The learned counsel for the petitioner argued that the petitioner is in ownership and possession of 10 Ares 60 sq.meter of property and the respondents who are relatives and neighbours are trying to encroach upon the property. The learned counsel for the respondents argued that the petitioner is not having the extent of property as stated and she is not having any property in resurvey 197 of Ayiroor village. She has not even produced any documents also. The cause of action is a false. The petition schedule is also wrong. Hence the application is liable to be dismissed. On perusal of the documents before the court it could be seen that Ext.A1 and A2 are of the year 1958 and 1966. The tax receipt produced is of the year 2012. Petitioner claims that her property is having well defined boundary. That is to an extend of 10 Ares 60 sq. meters. Even though the advocate

commissioner visited the property and in the first portion of the report stated in detail about the petition schedule properties , in the later part of his report he himself had reported that to identify the petition schedule properties the help of the surveyor is essential. He reported several constructions in the property shown as plaint A schedule. That is not mentioned in the pleadings. Even a hospital and sawmill and also shops are seen in plaint A schedule property. The petitioner is having no case that she is running any such institution. Further two documents produced from the side of the petitioner is pertaining to the property belonging to Sri. Muhammed Nahas. He is not a party to the suit. Admittedly the petitioner has alienated the property which was in her possession. Now she has not produced any documents to substantiate her contention. This is more striking since the respondents had produced two documents, Ext.B3 and B4. Both the documents are issued from village office, Ayiroor. From these documents it could be seen that in resurvey 197/12 Smt.Rafeeka Beevi is having no property as per revenue records. Considering the fact that the petitioner has prima facie failed to prove that she is in possession and ownership of any property as scheduled in plaint A schedule I am of the view that there is prima facie suppression of material facts. No document is produced as to show how she obtained 10 Ares 60 sq.meters of property. So by merely producing a document in the name of Sri. Mohammed Nahas she

could not establish her right. Her title deed is also not produced. The petition schedule property itself is not identifiable. The petitioner failed to prove prima facie case and balance of convenience in her favour. In these circumstances I am of the view that the petitioner is not entitled to an equitable relief as prayed for. So I am not inclined to allow this application. Hence these points are found against the petitioner.

10. Point No.4: - The petitioner having failed to prove prima facie case and balance of convenience and irreparable loss or injury in her favour is not entitled to an order of temporary injunction.

In the result, petition is dismissed with costs.

(Dictated to the Confidential Assistant, transcribed and typed by her, corrected and pronounced by me in open court, this the 12th day of April, 2024)

**ARAVIND. P
MUNSIFF
(For REHKA LAURIAN, MUNSIFF)**

APPENDIX :-

Exhibit marked for the petitioner

A1- Certified copy of settlement deed no. 2931/1958 of Varkala,
S.R.O.

- A2- Certified copy of sale deed no 547/1996 of varkala, S.R.O.
- A3- Tax receipt dated. 6/3/12.
- A4- Is the field sketch of resurvey 197 of Ayiroor Village.
- A5- Is the certified copy of resurvey plan of filed No. 197/12 of Ayiroor Village
- A6- Is the notice in Form no. 6 issued to Muhammed Nahas, S/o Abdul Rahim, Rahim Manzil, Ayiroor P.O,
- A7- Is the receipt issued from Taluk Office, Varkala in favour of Muhammed Nahas.
- A8- Is a document issued to Sri. Muhammed Nahas, Under the provision of R.T.I. Act.

Exbt marked for the Respondents

- B1- Is the settlement deed executed by the 1st respondent in favour of 2nd respondent regarding her property to an extend of 45 Cents in resurvey 197/13 of Ayiroor Village.
- B2- Is the Areas 410 sq. meters of property in resurvey 197/13.
- B3- Is the documents regarding the ownership and possession of the petitioner obtained from Ayiroor Village Office as per the provisions of R.T.I. Act.

B4- Is also obtained as per the provisions of R.T.I. Act regarding the property in resurvey 197.

COURT EXHIBITS:- Nil

MUNSIFF