

IN THE COURT OF THE MUNSIFF-MAGISTRATE, SULTHANBATHERY

Present: Sri.Aravind P., Munsiff-Magistrate

Tuesday, the 16th day of June, 2020
26th day of Jyaishta – 1942

INTERLOCUTORY APPLICATION No.2/2020
ORIGINAL SUIT No.7/2020

Chamakalayil Santha,
Aged 62 years, W/o.Lakshmanan,
residing at Panaparambath House,
Meenangadi Post, Purakkadi amsom desom,
Sulthanbathery Taluk, Wayanad District,
PIN – 673 591.

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Petitioner
Plaintiff

V/s.

Olikuzhiyil George, age about 60 years,
Father's name not known, residing at
Purakkadi amsom desom, Meenangadi Post,
PIN – 673 591.

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Respondent
Defendant

This Interlocutory Application is coming on this day hearing before me in the presence of Sri.C.V.George and Sri.K.M.Manoj, Advocates for the petitioner and Sri.Aby Cheriyan, Advocate for the respondent and on the same day the Court passed the following:-

ORDER

This is a petition filed under order 39 rule 1 of Civil Procedure Code.

2. Petitioner's case in brief are as follows:- Petition schedule item No.1 property is absolutely belongs to petitioner/plaintiff. Respondent is having landed properties on the eastern and the southern side of the land which belong to the petitioner. Since there was no clear passage to the house of the respondent, respondent requested the petitioner to permit him to use petitioner's property for ingress and egress to respondent's house. Petitioner gave oral permission to do so.

3. Things are being like this, on 27.12.2019 the respondent/defendant without the permission of the petitioner dumped remnants of his demolished house in the property of the petitioner. Petitioner questioned the same. Then the respondent informed that he will convert the footpath into way motorable road. The respondent has no right to do so. If the respondent succeeds in his above mentioned attempt, then property of the petitioner will be severed into two pieces. So the petitioner has approached the court for permanent prohibitory injunction. Along with the suit, the petitioner has filed this petition for granting temporary injunction till the disposal of the suit. Hence the petition.

4. Respondent appeared and filed objection are as follows:- The petition is not maintainable either in law or on facts. The respondent admits that he is possession of landed property adjacent to the property found to be in the possession of the petitioner. The respondent does not need property of petitioner for ingress and egress to his property. The petitioner dumped building waste in the pathway which is used by respondent. Respondent and other local residents are using a panchayath road known as Pothayam Colony-Choondalipuzha road in order to reach Mylambadi town. Except this road, there is no way available for respondent and other local residents for ingress and egress. The said road is in existence from time immemorial and the same is repaired now and lies as a motorable road. So objection of the respondent is concluded with a prayer to dismiss the petition with costs of the respondent.

5. Based on the rival contentions following points arise for consideration:

1. Has the petitioner made out a prima facie case ?
2. Is the balance of convenience in favour of the petitioner ?
3. Irreparable injury if any to any of the parties, if injunction is granted, or if not granted ?
4. Reliefs and costs.

6. From the side of the petitioner Exbts.A1 to A4 were marked. (Ext.A4 is rejected since it is a photocopy). No documents marked on the side of the respondent. Commission report and rough sketch are marked as Exbts.C1 & C1(a).

7. Heard learned counsel on either side and perused records.

8. Point Nos.1 to 3:- The case of the petitioner is that with the permission of the petitioner the respondent started to use property of the petitioner for ingress and egress to respondent's house. Now without permission of the petitioner, respondent dumped building waste in that area. Attempt of the respondent is to convert the said pathway into a motorable road. Learned counsel for the petitioner argued that if it happens, then the property of the petitioner will be severed into two pieces. Learned counsel further argued that respondent is having no authority to do so. So the learned counsel concluded that argument with a prayer to allow the petition and grant temporary injunction till the disposal of the suit.

9. Learned counsel for the respondent vehemently objected and argued that there is no legal backing for the case of the petitioner. The respondent is not using property of the petitioner as a pathway. At the same time there exist a panchayath road known as Pothayam Colony-Choondalipuzha road. The respondent and other local residents are using said road for ingress and egress. Learned counsel further contended that existence of the said road is detailedly reported in Ext.C1 & C1(a) by the Advocate commissioner. The said report shows that the lie of the road is not as stated by the petitioner. So the learned counsel concluded the argument with a prayer to dismiss the petition.

10. This court considered the contentions in detail. In Ext.C1, it is specifically stated that the mud road which goes to Pothayam Colony - Choondalipuzha is having 8 feet at its beginning, and when it reaches the property of the petitioner, it is having a width of 10 feet. The said mud road goes to river side after the property of the respondent. The said mud road is having 35 meters length from the public road till reaches the property of the respondent. Ext.C1 clearly reveals that the said mud road is a motorable road. It is further reported that owner of the property, where the mud road existed surrendered that property for constructing road for the uses of petitioner and respondent and also for the other local residents.

11. So it is crystal clear that the mud road used by respondent is not owned by the petitioner. There is no other evidence submitted by the petitioner to prove that the said mud road is owned by the petitioner. So it can be safely concluded that petitioner has approached this court by suppressing material facts. There is no prima facie case is available in favour of the petitioner. Balance of convenience is also not in favour of the petitioner. If injunction is granted, the respondent will be prevented from using the said mud road. So irreparable injury will be caused to him. At the same time no such injury to the petitioner, even if injunction is not granted. So this court is of the view that the petitioner is not entitled for a temporary injunction. So Point Nos.1 to 3 are found against the petitioner.

12. Point No.4: Considering the facts and circumstances of the case both parties are directed to suffer their respective costs.

In the result, the interlocutory application is hereby dismissed.

(Dictated to the Confidential Assistant, transcribed and typed by him, corrected and pronounced by me in open court this the 16th day of June, 2020).

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Appendix:

Petitioner's Witness:- Nil.

Petitioner's Exhibits:

A1	-	06-04-1987	-	Assignment deed.
A2	-	18-07-2019	-	Land tax receipt.
A3	-	04-01-2020	-	Possession certificate.
A4	-	22-12-2019	-	Copy of the complaint (Rejected)

Respondent's Witness & Exhibits:- Nil.

Court Witness:- Nil.

Court Exhibits:

C1	-	16-01-2020	-	Commission report.
C1(a)	-	16-01-2020	-	Rough sketch.

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Typed by : Geetha V.
Compared by: Preethi P.B.