

IN THE COURT OF THE MUNSIFF-MAGISTRATE, SULTHANBATHERY

Present: Smt.Gale Joy Chettupuzha, Munsiff-Magistrate

Wednesday, the 7th day of August, 2024
16th day of Sravana – 1946

ORIGINAL SUIT No.57/2021

Varghese, Aged 74 years, S/o.Kuriyakose,
Cheruthottil Veedu, Ambalapadi, Krishnagiri
amsom desom, Sulthanbathery Taluk,
Wayanad District, PIN – 673 591.

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Plaintiff

V/s.

C.P.Scariya, Aged 61 years, S/o.Paily, Chenatteal
Veedu, Mepperikunnu, Kumbaleri Post,
Krishnagiri amsom desom, Sulthanbathery Taluk,
Wayanad District, PIN – 673 591.

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Defendant

This original suit is coming on this day for hearing before me in the presence of Sri.T.V.Arun, Advocate for plaintiff and Sri.K.J.Vijayakumaran, Advocate for defendant and on the same day the court delivered the following:-

JUDGMENT

This suit is instituted for mandatory injunction.

2. Plaintiff averments in brief are as follows :- Plaintiff is the absolute owner and in possession of the plaint schedule property. Apart from the plaintiff, no other person has any right over the plaint schedule property. Plaintiff does not reside in the aforesaid property. The defendant property situates at the southern and western part of the plaint schedule property. The plaint schedule property slopes steeply from north to south. The defendant had removed the soil from his property in December, 2020. The property of the plaintiff is more than 5 meters higher than the level of the defendant's

property. The defendant removed the soil from his property in a completely unscientific manner, without maintaining lawful distance.

3. At the time of removal of soil, the defendant had agreed to construct the wall at his own costs and at the required height, according to the slope of the land. Due to the removal of the soil, the water has flowed over time and the soil has collapsed and the southern and western boundaries of the plaintiff's property have been completely disappeared. Thereafter, the plaintiff requested to build a wall. But the defendant was not ready for it, which results in an altercation between them. Thereafter, after the intervention of mediators, it was decided that the defendant should build a concrete wall on the southern boundary of the plaintiff's property (northern part of the defendant's property) at a height of five meters above the ground level. It was also decided that on the western boundary of the plaintiff's property, a wall should be constructed by the defendant at his cost. But till date, the defendant is not ready to build such a wall. As the boundary between the property of the defendant and plaintiff is not clear at present, the plaintiff has submitted an application to the village authorities requesting that the properties be measured and the boundaries be determined.

4. Further the defendant has constructed a building on his property without complying with existing building regulations, and the water from the roof of the house has fallen on the plaintiff's property. Therefore, the plaintiff made a complaint to the concerned authorities in respect thereof. Although an order was given to the defendant by the authorities to prevent water from falling on the property of the plaintiff, the defendant gave a false reply to the authorities. The defendant has unscientifically and illegally removed the soil from the property lying on a single topography and deprived the elevated land of the necessary lateral support. If the defendant is not ready to build the supportive wall, the plaintiff will not be able to do any construction work on his property. Hence, the plaintiff prays directing the defendant to construct the support wall and

demolish the illegally constructed building within a specified time limit with the cost of the defendant. If the defendant had not complying the same, the plaintiff prays that he shall be permitted to build a support wall with the help of this court with costs of the defendant and to demolish the illegal construction area of the building. Otherwise, it will cause irreparable hardship to the plaintiff. Hence the suit is instituted.

5. On issuance of process, defendant entered appearance. But, he did not file a written statement even after ample number of opportunities were given. Hence, this court proceeded under Order VIII Rule 10 of Civil Procedure Code. Plaintiff filed an affidavit in lieu of examination in chief and he was examined as PW1. Exts. A1 to A3 were marked, out of which Ext. A1 is marked subject to proof.

6. Heard learned counsel for the plaintiffs and perused the documents.

7. Exhibits A1 is the copy of the Pattayam No 273-66 DK, dated 02.12.1969 (subject to proof). Ext. A2 is the tax receipt dated 16.06.2021. Ext. A3 is the possession certificate. The claim of the plaintiff is established through unchallenged testimony of oral and documentary evidence. So after considering the material facts, this court is of the view that plaintiff is entitled to get a decree for mandatory injunction against the defendant.

8. Considering the facts and circumstances of the case, the plaintiff is entitled to get costs of the proceedings.

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

- (1) **The defendant is directed to build a support wall at the southern boundary of the plaint schedule property at his cost within a period of one month as per the plans and estimate of a civil engineer and under his supervision and also directed to demolish the part of building portion allegedly constructed by him at his cost.**

- (2) If the defendant fails to do so, the plaintiff can approach the court to get an officer deputed for getting the decree executed.
- (3) Plaintiff is entitled for costs of the suit also.

(Dictated to the Confidential Assistant, transcribed and typed by her, corrected and pronounced by me in open court this 7th day of August, 2024)

MUNSIFF-MAGISTRATE

Appendix:-

Plaintiff's Witness:

PW1 - 08.07.2024 - Varghese.

Plaintiff's Exhibits:

A1 - 02.12.1969 - Copy of the Pattayam No.273-66 DK (Subject to proof)
A2 - 16.06.2021 - Tax receipt.
A3 - 03.11.2020 - Possession certificate.

Defendant's Witness and Exhibits : Nil.

MUNSIFF-MAGISTRATE

Typed by : Girija T N
Compared by : Haseena K A

