

IN THE COURT OF THE ADDITIONAL MUNSIFF, ALAPUZHA.

**Present: Smt.Indu P Raj., LL.M, Nyayadhikari, Gram
Nyayalaya, Ambalapuzha, Incharge of Additional Munsiff
Wednesday the 19th September, 2018/28th Bhadra, 1940**

OS.No.58/13 Filed on 25.01.13

Plaintiff:

Rosamma, aged 60 yrs,
W/o.Antony, Residing in
Valiyaveettil,
Kuttamangalam muri,
Kainakary Village,
Alappuzha

By Adv. Sri.K.S.Hariharaputhran

Defendant:

Sujathan, aged about 67 yrs,
S/o.late.Kankan, Residing in
C Block, Chirayil veedu,
Vembanadu P.O, R Block,
Kainakary, Alappuzha

By Adv.Sri.Cyril Joseph

This suit having been heard on 19.09.18 and the court
on the same day delivered the following:

JUDGMENT

Suit is one for injunction against trespass.

2. Plaint averments in brief, are as follows:-

Plaintiff is the absolute owner in possession of the plaint schedule property. Plaint schedule property consists of 3 Ares of paddy land and a 'chira' on the southern side. Plaintiff obtained the plaint schedule property as per the Sale deed No.3673 dated 07.07.1988 of S.R.O, Puthenambalam and the Rectification deed No.1568 dated 20.06.2003 of the same S.R.O. The four boundaries of the plaint schedule property is well demarcated. The plaintiff is cultivating paddy in the land portion and taking usufructs from the 'chira' portion. The property situated on the western side of the plaint schedule property is purchased by the daughters of the plaintiff. A litigation regarding trespass is pending between the daughters of the plaintiff and the defendant. Now the defendant is taking hasty steps to trespass into the plaint schedule property and trying to interfere with plaintiff's peaceful enjoyment and possession of plaint schedule property. Hence this suit.

3. The case of the defendant, in brief, is as follows:-

The description of the plaint schedule property is not correct.

Plaintiff has no right or possession in the plaint schedule property. The title documents of the plaintiff are fabricated. The person who executed Rectification deed No.1568/2003 and Sale deed No.3673/1988 did not have right to execute the same. The plaintiff never paid tax for the plaint schedule property. Plaint schedule property has no clear boundaries. The plaintiff never used to take usufructs from the 'chira' portion. The pending litigation between daughters of the plaintiff and the defendant is disposed through A.S.No.67/2003 on 30.08.2006. There is an observation in O.S.516/1997 that the defendant has no possession in plaint 'C' schedule property which is the 'chira' portion in that case. The case was decreed on 28.03.2003. The appeal was dismissed on 30.08.2003. The Rectification deed was executed on 20.06.2003 that is, after the disposal of O.S.516/1997 and before filing an appeal on 09.07.2003. After that the plaintiff executed a deed in favour of their daughters and filed O.S.764/2005. This case was also dismissed on 22.10.2009. An appeal preferred against this case as A.S.No.4/2012 was also dismissed on 17.07.2012. The defendant got the possession of the 'chira' portion in 25 years ago from one V.G. Raju. The plaintiff is never had any right or possession on the 'chira' portion. Plaintiff had lost their right in the 'chira' portion by the adverse possession of

the defendants. Thus the plaintiff has no cause of action to file this suit. Hence prayed for the dismissal of the suit.

4. From the above rival contentions, the following issues were framed for trial:-

1. Whether the plaintiff has title and possession over plaint schedule property?
2. Whether the plaintiff is entitled for a decree of permanent prohibitory injunction as prayed for ?
3. What is the order as to costs ?

5. Issue No.1 is strike out, because it is unnecessarily framed.

6. PW1 and PW2 were examined from the side of the plaintiff. Exhibits A1 to A3 were marked. Exhibits B1 to B7 were marked from the side of defendant. Defendant adduced no oral evidence.

7. **Issue No.2:-** In this matter the plaintiff has made out a case of trespass in the plaint schedule property. The pleadings of the plaintiff shows that there is a chira portion on the southern side of the plaint schedule property. Ext.A1 is the title deed in favour of the plaintiff. Ext.A1 would go to show that on all the boundaries except the southern boundary are 'nilam' and the southern boundary is a river and 'chira' portion. Ext.A2 would go to show that the

southern boundary of plaintiff schedule property as a motor chal. The pleading of the plaintiff shows that the defendant trespassed on the property which is in the ownership of the daughter of the defendant. The case of the plaintiff is the apprehension of trespass in the plaintiff schedule property. The alleged trespass is on the northern side of the defendant's daughter's property. But the plaintiff has not mentioned in the plaint that on which side of the plaintiff schedule property, the plaintiff apprehends the trespass.

8. The spouse of the plaintiff was examined as PW1. PW1 deposed in consonance with the plaint averments. PW1 further deposed that plaintiff is remitting tax since 1988. Ext.A3 is the tax receipt in favour of the plaintiff. PW1 deposed that earlier also there had been litigation between the plaintiff and the defendant. But the dispute in that case was with respect to a chira portion. PW1 admitted during the evidence that Ext.B7 case was regarding the southern chira portion. PW1 further deposed that he was cheated by the previous owner of plaintiff schedule property by executing the Ext.A1 document, without mentioning the boundaries of the plaintiff schedule property in the title document. Hence he had to execute Ext.A2 correction deed. Ext.A1 document would go to show that chira was written in the eluka but as scored out. It is pertinent to note that

plaintiff has not taken effort to produce prior title documents with respect to plaint schedule property in order to prove his case that chira portion was included in the plaint schedule property.

9. During the evidence the plaintiff deposed that the defendant had built a house in the chira portion and is residing in that property. He further deposed that defendant has cut and removed the trees in the plaint schedule property. The evidence of PW1 shows that there mentioned two chiras. The defendant is said to have built house in the chira portion which is in the property of the daughter of the plaintiff. The plaintiff omitted to mention in the pleading that the defendants are trying to trespass on the southern chira portion. PW1 deposed that the defendant had cut and removed the trees in the plaint schedule property. But the plaintiff never had such a case of cutting and removal of trees in the plaint schedule property on the date of suit. PW1 admitted that now the defendant is cultivating the plantains in the chira portion. Defendant's case is that he is in possession of the 'chira' portion. Ext.B1 is the Appellate Court Order in A.S.57/2003 an appeal between the plaintiff and the defendant which was dismissed as not pressed. The earlier judgment can only be relevant if it fulfill the conditions laid down by the Indian Evidence Act in S.40 to 43. In **C.D. Field's Law of Evidence 13th**

edition Page 471, the earlier judgments is no doubt admissible to show the parties and the decision but it is not an admissible for the purpose of relying upon appreciation of evidence. Ext. B2 is the certified copy of the plaint in O.S.516/1997 between the plaintiff and the defendant in which there was a dispute regarding the chira portion in comprised in Survey No.545/24 AD1. Ext.B3 is the certified copy of the judgment in O.S.516/1997. Ext.B4 is the certified copy of the decree in Ext.B3 judgment. Ext.B5 is the judgment in the case between the daughters of the plaintiff and the defendant. The description of the property in the plaint, Ext.B3 and Ext.B5 show that all these properties are comprised in Sy.No.545/24 AD1. Exts.B1 to B7 would go to show that the subject-matter of the dispute is the 'chira' portion on the southern side.

10. In CP Field's Law of Evidence 13th edition Page 478 is reads as follows:- *A judgment in another suit which is not inter partes may be evidence under Sec.13 of the Evidence Act for certain purposes, namely, to prove the fact of the judgment; to show who the parties to the suit were; to show what was the subject-matter of the suit; to show what was decided or declared by the judgment; to show what documents had been filed by the parties in the proceedings; to establish the transaction referred to in the judgment; as evidence to*

show the conduct of the parties or particular instances of the exercise of a right or assertion of title or to identify property, or to show how property had been previously dealt with; to establish a particular transaction in which a right is asserted and the name of the person, if any, who is declared in the judgment as entitled to possession, but the judgment is not evidence to establish the truth of the matters decided in that judgment.

11. Thus the evidence on record shows that the plaintiff has cleverly omitted to mention that the defendants are trying to trespass on the southern portion of the plaint schedule property. Plaintiff also concealed the fact that the defendant is in possession of the plaint schedule property. The plaintiff did not adduce any evidence to prove his case of trespass. From the evidence of the PW1 it was brought out that plaintiff is in possession and cultivating plantains of the plaint schedule property. The plaintiff failed to prove the cause of action as alleged in the plaint.

12. The plaintiff seeks discretionary remedy of this Court. But he has approached the Court with unclean hands suppressing material facts. The grant of injunction is a serious matter and the courts are to be careful while granting injunction. If the plaintiff in his dealings with the person against whom the relief is sought has

acted in an unfair or unequitable manner he would not be entitled to the discretionary remedy. Considering the facts and circumstance so far in this matter and presently on record, balance of convenience is against the plaintiff. The pendulum of judicial discretion consequently shifts in favour of the defendant and is away from and against the defendant. Hence the issue No.2 is found against the plaintiff.

13. **Issue No.3:-** In view of the findings on issue Nos.1 and 2, the suit is liable to be dismissed with costs.

In the result, the suit is dismissed with costs.

Dictated to the Confidential Assistant, transcribed and typed by her, corrected and pronounced by me in open court on this the 19th day of September, 2018.

Sd/-
Indu P Raj.,
Nyayadhikari,
Gram Nyayalaya, Ambalapuzha
Incharge of Addl.Munsiff

APPENDIX

Exhibits for the Plaintiff:

- A1 07.07.88 Sale Deed No.3673 of SRO, Puthanambalam
- A2 20.06.03 Photocopy of Rectification Deed No.1568/03 of the SRO, Puthanambalam
- A3 02.05.11 Basic Tax Receipt No.3163102 issued by the Village Officer, Pulincunnu

Witnesses for the Plaintiff:

Pw1 07.12.17 Antony

Pw2 12.12.17 Balachandran

Exhibits for the Defendant:

- B1 30.08.06 The copy of judgment in AS.57/03 of the Sub Court, Alappuzha
- B2 16.05.07 The Certified Copy of the plaint in OS.516/97
- B3 28.03.03 The certified copy of judgment in OS.516/97
- B4 28.03.03 The certified copy of the decree in OS.516/97
- B5 22.10.09 The copy of the judgment in OS.764/05 of the Munsiff's Court, Alappuzha
- B6 22.10.09 The copy of the decree in OS.764/05 of the Munsiff's Court, Alappuzha
- B7 17.07.12 The copy of the judgment in AS.4/10 of the District Court, Alappuzha

Id/-

**Nyayadhikari,
Gram Nyayalaya, Ambalapuzha
Incharge of Addl.Munsiff**