

IN THE COURT OF THE ADDITIONAL MUNSIFF, KOTTAYAM.

Present:- Smt. Deepa Mohanan, Additional Munsiff.

Thursday, 12th day of October 2023
20th day of Aswina, 1945

Common Order in I.A. No. 17/2023 and I.A.No.18/2023
in O.S. No. 574/2020

IA No. 17/2023

Petitioner/ 1st Defendant:-

John P.J., aged 61 years, S/o.Joseph,
Parakkallil House, Amayannoor P.O.,
Amayannoor Kara, Ayarkunnam Village,
Kottayam Taluk, Kottayam District.

**By Adv. Deepu Viswanath, Adv.P.T.Johnson
& Adv.Miji John.**

Counter Petitioners/Plaintiffs:-

1. Sunimol Biju, aged about 45 years,
W/o.Biju Kuruvilla, Nedumparambil House,
Amayannoor P.O., Amayannoor Kara,
Ayarkunnam Village, Kottayam Taluk,
Kottayam District.
2. Biju Kuruvilla, aged about 47 years,
S/o.N.I.Kuruvilla, Nedumparambil House,
Amayannoor P.O., Amayannoor Kara,
Ayarkunnam Village, Kottayam Taluk,
Kottayam District.

By Adv.Anish Kumar K.

IA No. 18/2023

Petitioner/1st Defendant:-

John P.J., aged 61 years, S/o.Joseph,
Parakkallil House, Amayannoor P.O.,
Amayannoor Kara, Ayarkunnam Village,
Kottayam Taluk, Kottayam District.

**By Adv. Deepu Viswanath, Adv.P.T.Johnson
& Adv.Miji John.**

Counter Petitioners/Plaintiffs:-

1. Sunimol Biju, aged about 45 years,
W/o.Biju Kuruvilla, Nedumparambil House,
Amayannoor P.O., Amayannoor Kara,
Ayarkunnam Village, Kottayam Taluk,
Kottayam District.
2. Biju Kuruvilla, aged about 47 years,
S/o.N.I.Kuruvilla, Nedumparambil House,
Amayannoor P.O., Amayannoor Kara,
Ayarkunnam Village, Kottayam Taluk,
Kottayam District.

By Adv.Anish Kumar K.

These Petitions are having been finally heard on 29.09.2023
and the Court on 12.10.2023 Passed the following:-

COMMON ORDER

IA 17/23 is filed under section 10 of CPC. IA 18/23 is filed under section 151 of CPC for joint trial.

2. **Contentions in both the petitions are as follows** :- Petitioner is the 1st defendant in OS 465/20. The suit was filed for declaration of prescriptive right of easement and injunction against the 2nd plaintiff in OS 574/20. The matter in issue in this suit is directly and substantially in issue in the previously instituted suit OS 465/20 litigating between the same parties. Hence this suit OS 574/20 is liable to be stayed or both the suits are to be tried jointly.

3. **Plaintiff filed objection to the petitions stating** that petitions are not maintainable. The subject matter in the suit is not directly and substantially in issue in OS 465/20. Parties are also not same. Petitions were filed only to drag the matter.

4. **The following points raised for determination;**

1. Is there any need to stay the suit?
2. Is there any need to try the suit jointly with OS 465/20?
3. Reliefs and costs?

5. Heard both sides.

6. **Point No.1 and 2** :- OS 574/20 was filed for a decree of permanent prohibitory injunction restraining the defendants and men under them from trespassing into item no.1 and 2 properties, cutting open any way through item no.1 and 2 and from committing any waste therein. The contentions in the plaint would show that item no.1 and 2 belong to the plaintiffs. The 1st defendant is having property on the south – eastern side of item no.1. Originally, item no.1 and the property of the defendant were owned by the same owner named Kurian. Kurian constructed a residential house therein and was residing there along with his family. Kurian transferred 2.57 ares of property in the year 2002 to a person named P.V. Abraham and defendant purchased the property from the latter in the year 2012. The remaining property was purchased by the plaintiffs in the year 2014 from the legal heirs of above stated Kurian. There is a private road available to item no.1 and the property of the defendant which was constructed by Kurian. Plaintiff purchased portion of property from a person name Raghavan as per title deed no.656/2020 for constructing a road for vehicular traffic to item no.1 from the public road. The said portion is item no.2. The 1st

defendant is now trying to extend the private road to item no.2 for which he has no right.

7. OS 465/20 was filed by the 1st defendant in OS 574/20 against Biju Kuruvilla, the 1st plaintiff in OS 574/20 and N.A. Kuruvilla. The said suit was filed for declaration of prescriptive right of easement and injunction. Item no.1 in the said suit belongs to the 1st defendant herein. He purchased it by virtue of sale deed no.526/12. His property is lying in well defined boundaries. Item no.2 is a pathway and having a width of 3 meter and length of 120 meter starting from Poothiri – Methracherry road and ends at the property of one Siby Kochuthottunkal. The 1st defendant/petitioner is using the said way for ingress and egress to their property. It is the only way available to him. Item no.3 in OS 465/20 is the property of the 1st plaintiff herein. It is lying on the eastern and northern sides of item no.1 and on the western side of item no.2 therein. It is further stated that defendants are trying to trespass into item no.1 and 2 and hence the petitioner who is the plaintiff therein sought the relief of declaration and injunction against the 1st plaintiff herein and his father.

On going through the pleadings in both the suits, it is found that the subject matter of both the suits are not identical so as to

attract the provisions of section 10 of CPC. There is no need to stay this suit. But the rival contentions of the parties would show that the nature of the evidence to be adduced in both the suits may be identical. Hence in order to avoid repetition of evidence and for saving the judicial time, it is only apposite to try both the suits together. Hence IA 17/23 is hereby dismissed allowing IA 18/23 for trying both the suits jointly. OS 574/20 shall be the leading case.

(Dictated to the Confdl. Asst., transcribed and typed by him, corrected by me and pronounced in open court on this the 12th day of October 2023).

**Sd/-
Deepa Mohanan
Additional Munsiff**

APPENDIX:- NIL

**Id/-
Additional Munsiff**

//True Copy//

Typed By: Anumol
Compared by: Jaya

**Sd/-
Additional Munsiff**

Addl. Munsiff's Court, Kottayam
Copy of Common Order in
I.A. No.17/2023 and
IA No.18/2023
in O.S. No. 574/2020
Dated : 12.10.2023.