

**IN THE COURT OF ADDITIONAL MUNSIFF-II,
THIRUVANANTHAPURAM**

Present: Sri. Arun Kumar.P, Additional Munsiff -II
On Wednesday, 14th day of December, 2022/23rd Agrahayana, 1944

IA No.1/2021 and IA No.4/2022 in O.S No.107/2021

IA No.1/2021 in O.S No.107/2021:-

Petitioner/Plaintiff:-

Joseph Gomez, aged 50 years,
S/o Gonzac Gomez, now residing at
House No.140, St Sebastian Lane,
Pallithura PO, Thiruvananthapuram-695586
(also having address at House No.147,
TC 1/357, St Sebastian Lane, Pallithura P O,
Thiruvananthapuram-695586

By Adv Smt Reeja Hari

Counter Petitioners/Defendants:-

1. Jipson Antony, aged 52 years, S/o Antony
residing at Roy House, TC.71/1315, Valiyathura,
Vallakadavu P O, Thiruvananthapuram
2. Jobin Jipson, aged 23 years, S/o Jipson,
residing at Roy House, TC 71/1315, Valiyathura,
Vallakadavu P O, Thiruvananthapuram
3. Jeena Jipson, aged 17 years, D/o Jipson
residing at Roy House, TC 71/1315, Valiyathura,
Vallakadavu P O, Thiruvananthapuram.
(Minor represented by her father, the 1st
defendant)

**By Adv. Sri. Sudheendranath and
Smt. Meera S Nath (CP1),
By Adv. Sri. S.Vijayakumaran (CP2 and CP3)**

IA No.4/2022 in O.S No.107/2021

Petitioners/Defendants 2 and 3:-

1. Jobin Jipson, S/o Jipson, residing at
T.C.1/357, House.No.147 (old No.A.P X/147),
Pallithura, Attipra Village, Thiruvananthapuram
2. Jeena Jipson, D/o Helen residing at
T.C 1/357, House.No.147 (old No.A.P X/147),
Pallithura, Attipra Village, Thiruvananthapuram

By Adv. Sri. S Vijayakumaran

Counter Petitioners/Plaintiff:-

Joseph Gomez, aged 51 years,
S/o Gonzac Gomaz House.No.140,
St Sebastian Lane, Pallithura P O,
Thiruvananthapuram-695586 (also having
address at House No.147, TC.1/357,
St Sebastian Lane, Pallithura P O,
Thiruvananthapuram-695586

By Adv. Smt. Reeja Hari

These petitions are having been finally heard on
14.12.2022 and the court on the same day passed the
following.

COMMON ORDER

This is common order passed in IA 1/2021 filed by the plaintiff in OS 107/2021 to pass temporary injunction and IA 4/2022 filed by defendants two and three to pass temporary injunction in their favour.

2. The application averments in IA 1/2021 brief is as follows:- The petitioner is the absolute owner and is in possession of 10.750 cents of property comprised in Re-survey No.42/4 which he obtained by virtue of a settlement deed No.2241 of 2009. The first respondent is his brother-in-law and second and third respondent are first respondent's children. The petitioner is employed abroad. From the date of settlement deed the petitioner is in absolute possession of plaint schedule property. After the death of wife of first defendant their relation with his wife's relative got strained. The first respondent with the support of his children with ultimate motive had on 02/01/2021 openly challenged that he will trespass into the plaint

schedule property and on 05/01/2021 and 06/1/2021 tried to trespass into the plaint schedule property. The petitioner is the absolute owner and is in possession of plaint schedule property and the balance of convenience is in favour of the petitioner. If petition is not allowed petitioner will be put in great hardship. Hence the application.

3. The respondents filed counter contending as follows: The relationship of the petitioner and respondents are admitted. The petition is not maintainable. The father and mother of second respondent filed OS 1322/2001 to set aside a cancellation deed with respect to the plaint schedule property. The respondents are residing in the plaint schedule property from their birth. The parents of respondents resided till 2010 and after that they went to United Kingdom. The plaint schedule property originally belonged to parents of second respondent which they obtained by virtue of settlement deed No.661/1998 of Pattom SRO. In the meanwhile, the siblings of respondents mother made

under influence and instigated the grand mother of respondent to cancel the above settlement deed and executed cancellation deed No.4165/2000. Hence parents of respondent filed this suit to set aside cancellation deed. As the parties left India the case could not be proceeded with. The respondents were residing in the plaint schedule property. The settlement deed No.2241/09 executed in favour of the petitioner is void ab-initio. The respondent had filed review and restoration petition in CMA pending before the District Court in suit No.OS 1322/2001. The petitioner is attempting to evict the respondents from plaint schedule property. Hence prays to dismiss the petition with costs.

4. The application averments in IA 4/2022 brief is as follows:- It is similar to the objection filed in IA 1/2022. The relationship with the petitioner and respondent are strained. The plaint schedule property originally belonged to the petitioner's parents which they obtained by virtue of

settlement deed No.661/1998 executed by his grand mother, Mary Gomez and they were residing therein. In the meanwhile the grand mother of the petitioner executed a cancellation deed No.4165/2000 and the parents of the petitioner herein had filed suit to set aside cancellation deed and since they left abroad suit cannot be contested. The petitioner had filed restoration and review in CMA 55/09 pending before Hon'ble District Court, Thiruvananthapuram with respect to the above suit. The plaintiff never obtained plaint schedule property by virtue of settlement deed No.224/09 as it is void ab-initio. The petitioner is now residing with his family in plaint schedule property and the respondent is attempting to remove them. The petitioner has made out a prima facie and balance of convenience is in his favour and irreparable injury could be caused to the petitioner if the petition is not allowed and respondent is restrained from forcibly evicting the petitioner from the plaint schedule property. Hence the application.

5. The respondent filed objection contenting that the petition is not maintainable. The relationship is admitted. The plaint schedule property belonged to plaintiff's mother who executed gift deed to the parents of defendants and it was cancelled by her subsequent vide cancellation deed No.460/1998. The parents of defendants approached Munsiff Court by OS 1322/2001 to set aside cancellation deed. But it was dismissed for default and they filed CMA 55/2009. The same was allowed on terms to pay Rs.5000/- to plaintiff within two weeks from 01/07/2001 and it was not complied with. The mother of the plaintiff executed settlement deed No.2241/09 and plaintiff became absolute owner and possession of the plaint schedule property. The defendants trespassed into his property. Hence the petition filed by the defendant is not bonafide and irreparable injury would be caused to respondent/plaintiff, if the petition is allowed. Hence prays to dismiss the petition.

6. From the side of the plaintiff, twelve documents were

produced and marked as Ext.A1 to A12.

7. From the side of the defendants, twenty five documents were produced and marked as Ext.B1 to B25.

8. Heard both sides.

9. From the rival contentions, the following points arise for consideration is:

1. Whether the plaintiff is entitled to get temporary injunction as prayed for in IA.1/2021 under O.39 R.1 and 2 of Code of Civil Procedure?

2. Whether the defendants are entitled to get temporary injunction as prayed for in IA.4/2022 under O.39 R.1 and 2 of Code of Civil Procedure?

3. Reliefs and costs?

10. **Points No.1 and 2:** In order to avoid repetition and for balance of convenience both these points are considered together and petitioner in IA 1/2021 is described herein after as plaintiff and petitioner in IA 4/2022 as defendant.

11. Learned counsel for the plaintiff submitted that the

plaintiff was in possession of the plaint schedule property by virtue of settlement deed obtained to him. The defendants produced no document to show that they were in possession of the plaint schedule property. The CMA was ordered to restore file conditionally on payment of costs to opposite side therein but it was not complied with and hence matter closed. So the cancellation deed executed by grandmother of the plaintiff is valid and hence subsequent transfer by settlement deed of 2009 by mother of plaintiff to plaintiff is valid. Hence submitted to dismiss application of defendant and allow application of plaintiff as he had made out an arguable case and if his prayer is not allowed irreparable injury may be caused to him and he will be put in hardship.

12. Per contra learned counsel for the defendants contended that Ext.B6 ration card. Ext.B5 passport and Ext.B2 order in MC 5/2021 in CMP 88/21 when residence order was passed in favour of the third defendant dated

11/01/2021 shows that the defendants are in possession of plaint schedule property and he further argued that the plaint schedule property originally belonged to the grandmother of the defendants and she along with the parent of the defendants resided in the plaint schedule property later the grandmother executed gift deed in favour of the parents of the second defendant and they were residing therein. Subsequently a cancellation deed was executed by grandmother upon coercion and it was challenged by parents of the second defendant and as they were abroad they could not follow up legal proceeding and suit dismissed. Later CMA was filed which was also not followed up. Now restoration application was filed and is pending before the Hon'ble District Court, Thiruvananthapuram. He further argued that the plaintiff is not residing in the plaint schedule property and since the cancellation deed was not validity accepted as proceedings is pending the Gift deed executed in favour of the parents

of the second defendant is valid and subsequent deed executed in favour of plaintiff is not valid.

13. The dispute centres around the possession of the plaintiff schedule property, the cancellation deed executed by grandmother of the second defendant and subsequent settlement deed executed by the mother of the plaintiff. From Ext.B2, B5 and B6 documents it is prima facie seen that the defendants were now in possession of plaintiff schedule property and if an injunction is granted in favour of the plaintiff it will result in frustrating the order in MC 5/21 dated 11/01/2021. Hence from rival submission I am prima facie satisfied that the defendants are in possession of plaintiff schedule property. Regarding the cancellation deed, settlement deed and its validity it can be decided at the time of evaluation of evidence. Hence from the above discussion and available materials I am prima facie satisfied that the defendants had made out an arguable case and balance of convenience is in their favour and irreparable

injury may be caused to them if IA 4/2022 is not allowed. Hence I am inclined to grant temporary injunction to defendant and dismiss temporary injunction application of plaintiff and point No.1 is found against the plaintiff and point No.2 is found in favour of the defendant.

14. Point No.2: Point No.1 is found against the plaintiff and point No.2 is found in favour of the defendant. IA 1/2021 is dismissed and ad-interim order passed in IA 1/2021 is vacated. IA 4/2022 is allowed. Temporary injunction as prayed for by defendant is allowed restraining the plaintiff from evicting the defendants and family from plaint schedule property until disposal of the suit.

In the result, IA 1/2021 dismissed. IA 4/2022 is allowed. No costs.

(Dictated to C.A., transcribed by her, corrected and pronounced by me in open court on this the 14th day of December, 2022).

Arun Kumar.P
Additional Munsiff II

APPENDIX :-**Exhibits for the Plaintiff:-**

A1	24/09/2009	Settlement deed No.2241/09
A2	07/01/2021	Acknowledgment receipt of Petition No.3505/21 at thumba Police Station
A3	22/11/2000	Deed No.4165/2000
A4	17/09/2009	Electricity Bill
A5	25/02/21	Receipt
A6	4/10/2011	Judgment in OS.1322/01 in the additional Munsiff Court (RCC), Thiruvananthapuram.
A7	Nil	Photocopy of Election ID card
A8	Nil	Photocopy of Aadhaar card
A9	Nil	Photocopy of Passport
A10	Nil	Copy of CMA No.55/09 filed before the Honourable District Court, Thiruvananthapuram
A11	22/11/22	Copy of OP Ticket
A12	23/11/22	Copy of FIR

Exhibits for the Defendants:-

B1	2/03/1998	Deed No.661/98
B2	11/01/2021	CMP 88/21 in MC 5/21 before JFMC-V, Thiruvananthapuram
B3	2/12/2008	Receipt
B4	23/08/2011	Receipt

B5	Nil	Relevant page of Thandapper Kanakku
B6	Nil	Original Passport
B7	Nil	Original Ration card
B8	01/09/2010	Coroners interim certificate of the fact of death
B9	Nil	File No.RDOTVM/4789/2021-B2 before the Revenue Divisional Officer, Thiruvananthapuram
B10	Nil	Copy of Pliant in OS.1322/2001 before the Hon'ble Munsiff Court, Thiruvananthapuram
B11	Nil	Copy of written statement in OS.1322/2001
B12	9/12/1999	Receipt
B13	Nil	Copy of written statement in OS.1322/2001
B14	01/07/2011	CMA No.55/2009 before the court of Additional District Judge-1, Thiruvananthapuram
B15	Nil	Review petition against the judgement in CMA No.55/2009
B16	Nil	Copy of Affidavit in CMA No.55/2009
B17	Nil	Copy of written statement by second defendant in OS 1322/2001
B18	Nil	Copy of Affidavit in CMA No.55/2009
B19	26/06/2021	Receipt

B20	02/11/2022	Certificate issued from Village Office
B21	02/11/2022	Photocopy of Certificate issued from Village Office
B22	Nil	Application filed before the Hon'ble JFMC Court, Thiruvananthapuram
B23	Nil	Copy of student ID card
B24	23/11/2022	Copy of FIR
B25	Nil	Objection filed in MC 5/21 before JFMC-V, Thiruvananthapuram

Court Exhibits:- Nil

Witness for both sides:- Nil

Additional Munsiff-II

Typed by: Prasanna K
Compared by:
FCS:

Fair copy of Order in IA 1/2021 and in IA.4/2022
in O.S.107/2021
Dated:14/12/2022