

**Francina vs Ravikumar**

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**SooperKanoon Citation :** [sooperkanoon.com/1614034](https://sooperkanoon.com/1614034)

**Court :** Kerala

**Decided On :** Jul-30-2021

**Judge :** Honourable Mr.Justice V.G.Arun

**Appeal No. :** OP(C)/570/2021

**Appellant :** Francina

**Respondent :** Ravikumar

**Judgement :**

OP(C).570/21 1

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE V.G.ARUN FRIDAY, THE 30TH DAY OF JULY 2021 / 8TH SRAVANA, 1943 OP(C) NO. 570 OF 2021 AGAINST THE ORDER/JUDGMENT IN OS 107/2020 OF MUNSIFF COURT, CHITTUR, PALAKKAD PETITIONER/S: FRANCINA AGED 30 YEARS W/O. SHAJI, HOUSE NO. 15, WARD NO.III, KOZHINJAMPARA PANCHAYAT, KOZHINJAMPARA AMSOM AND DESOM, CHITTUR TALUK, PALAKKAD DISTRICT. BY ADVS. RAJESH SIVARAMANKUTTY SRI.ARUL MURALIDHARAN SMT.JAEONA JAMES RESPONDENT/S: RAVIKUMAR AGED 48 YEARS S/O. RAJU,

KULUKKAPARA, PAZHANIYARPALAYAM, KOZHINJAMPARA  
VILLAGE, CHITTUR TALUK, PALAKKAD DISTRICT, PIN - 678555. BY  
ADVS. SRI.SAJAN VARGHEESE K. SRI.LIJU. M.P THIS OP (CIVIL)  
HAVING COME UP FOR ADMISSION ON 8.7.2021, THE COURT ON  
30.07.2021 DELIVERED THE FOLLOWING: OP(C).570/21 2

**V.G.ARUN, J.**

----- OP(C).No. 570 of 2021  
----- Dated this the 30th day of July, 2021

## **JUDGMENT**

The petitioner is the defendant in O.S.No.107 of 2020 on the

files of the Munsiffs Court, Chittoor. The respondent has filed the suit for a decree of permanent prohibitory injunction restraining the petitioner and her men from obstructing the possession and enjoyment of plaint schedule property by the plaintiff. As per the averments in plaint, the respondent had purchased the plaint schedule property from the petitioner as per Document No.1583 of 2018 dated 27.11.2018 of the Kozhinjampara SRO and is constructing a small thatched shed therein. While so, the petitioner approached the respondent requesting for reconveyance of the property. The respondent rejected her request and thereupon, the petitioner attempted to trespass upon the property.

2. In the suit, the respondent filed I.A.Nos.830 of 2020 for

temporary injunction and I.A.No.940 of 2020 for evicting the petitioner from the plaint schedule property. The trial court allowed both interlocutory applications and directed the petitioner to vacate the OP(C).570/21 3 premises within 15 days. Aggrieved, the petitioner preferred C.M.A.Nos.109 and 110 of 2020 before the Additional District Court, Palakkad. Hence, this original petition.

3. Heard Sri.Rajesh Sivaramankutty, learned counsel for the petitioner and Sri.Sajan Varghese K., learned counsel for the respondent.

4. Learned counsel for the petitioner contended that the sale

deed was executed in the respondents name as a measure of security, towards the amounts borrowed by the petitioner. The sale deed was executed with a specific understanding that the property will be reconveyed to the petitioner on repayment of the amounts due. The execution of the sale deed, way below the existing market price is indicative of the document not being executed as a sale deed. Further, the petitioners presence in the plaint schedule property

during inspection by the Advocate Commissioner proves her possession. Reliance is also placed on Exhibits A3 tax receipt and A4 possession certificate. It is contended that the balance of convenience is in the petitioners favour, as it is an admitted case that she has no other property or house.

5. Learned counsel for the respondent refuted the factual averments and contended that the Advocate Commissioners report does not improve the petitioners case in any manner. On the

OP(C).570/21 4 contrary, the report proves the claim of the respondent that he is effecting construction in the plaint schedule property. Other than presence of the petitioner, the Advocate Commissioner did not notice any evidence of the petitioner having set up residence in the property. The authenticity of Exhibits A3 and A4 is disputed by relying on Exhibits R1(b) tax receipt and R1(c) possession certificate issued in the respondents name. Moreover, in the face of sale deed dated 27.11.2018, the legal validity of which is not separately challenged, the petitioner cannot contend to be in possession and ownership over the plaint schedule property.

6. Having heard the learned counsel on either side at length and

having perused the documents produced, I find no reason to interfere with the concurrent findings of the courts below. The mere fact that the Advocate Commissioner noted the petitioners presence in the plaint schedule property cannot lead to the conclusion of she being in possession of the property. The uncontroverted assertion of the respondent that the petitioner is residing within

200 metres of the plaint schedule property, explains the reason for her presence. From the Advocate Commissioners report it is evident that a thatched shed is being constructed in the plaint schedule property. There is nothing in the Commissioner's report to indicate that the petitioner is residing in that shed. As the documents produced by the petitioner does not

OP(C).570/21 5 conclusively prove her possession over the plaint schedule property, the doctrine 'possession follows title', tilts the prima facie case and balance of convenience in the respondent's favour. In the result, the original petition is dismissed. Sd/- V.G.ARUN, JUDGE vgs OP(C).570/21 6 APPENDIX OF OP(C) 570/2021 PETITIONER EXHIBITS EXHIBIT P1 TRUE COPY OF THE OWNERSHIP CERTIFICATE ISSUED IN FAVOUR OF THE PETITIONER BY KOZHINJAMPARA GRAMA PANCHAYATH DATED 24.08.2020 WITH RESPECT TO BUILDING NO. III/470.

EXHIBIT P2 TRUE COPY OF THE ELECTRICITY BILL ISSUED TO THE PETITIONER DATED 03.09.2020. EXHIBIT P3 TRUE COPY OF THE POSSESSION CERTIFICATE DATED 23.11.2018 ISSUED TO THE PETITIONER. EXHIBIT P4 TRUE COPY OF THE PLAINT IN OS. NO. 107/2020 FILED BY RESPONDENT AGAINST PETITIONER ON 04.05.2020 PENDING BEFORE MUNSIF'S COURT, CHITTUR. EXHIBIT P5 TRUE COPY OF THE ADVOCATE COMMISSIONER'S REPORT DATED 10.05.2020. EXHIBIT P6 TRUE COPY OF COMMON ORDER DATED 24.08.2020 IN IA NO.830/2020 AND IA NO.940/2020 IN OS NO.107/2020 PASSED BY THE MUNSIF'S COURT, CHITTUR. EXHIBIT P7 TRUE COPY OF THE COMMON JUDGMENT DATED 17.02.2021 IN C.M.A NOS.109/2020 AND COURT-IV, PALAKKAD. RESPONDENT EXHIBITS EXHIBIT R1(a) TRUE COPY OF THE SALE DEED NO.1583/2018 DATED 27/11/2018 ON THE FILE OF SRO, KOZHINJAMPARA. EXHIBIT R1(b) TRUE COPY OF THE TAX RECEIPT ISSUED IN THE OP(C).570/21 7 NAME OF THE RESPONDENT ON 06/01/2020. EXHIBIT R1(c) TRUE COPY OF THE POSSESSION CERTIFICATE DATED 05/05/2020 ISSUED IN THE NAME OF THE RESPONDENT. EXHIBIT R1(d) TRUE COPY OF IA.NO.830/2020 FILED IN EXHIBIT P4 SUIT. EXHIBIT R1(e) TRUE COPY OF THE OBJECTION DATED 09/07/2020 FILED TO EXHIBIT R1(d). EXHIBIT R1(f)

TRUE COPY OF IA.NO.940/2020 FILED IN EXHIBIT P4 SUIT. EXHIBIT R1(g) TRUE COPY OF THE COUNTER AFFIDAVIT FILED IN EXHIBIT R1(f). EXHIBIT R1(h) TRUE COPY OF THE REPLY NOTICE SENT BY KSEB. EXHIBIT R1(i) TRUE COPY OF THE ORDER DTED 02/11/2020, PASSED IN IA.NO.1838/2020, IN EXHIBIT P4 SUIT. EXHIBIT R1(j) TRUE COPY OF THE AMIN REPORT DATED EXHIBIT R1(k) TRUE COPY OF THE ACKNOWLEDGEMENT CARD SIGNED BY THE PETITIONER, ON COMPLYING WITH

## **ORDER 39 RULE 3A OF THE CODE OF CIVIL**

PROCEDURE. EXHIBIT R1(l) TRUE COPY OF THE POSTAL ACKNOWLEDGEMENT CARD SIGNED BY THE PETITIONER ON SENDING REGISTERED NOTICE IN THE CAVEAT FILED (CAVEAT (OP) NO.206/2021) IN THIS HONOURABLE COURT. EXHIBIT R1(m): TRUE COPY OF THE LETTER NO.A2/1443/2021 DATED 23/03/2021 ISSUED BY KOZHINJAMPARA GRAMA PANCHAYATH.

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