

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

FRIDAY, THE 3RD DAY OF JULY 2015/12TH ASHADHA, 1937

AS.No. 122 of 1997 (E)

AGAINST THE JUDGMENT IN O.S.NO.66 OF 1992 OF SUB COURT, KOYILANDY
DATED 20.12.1996

APPELLANT(S)/DEFENDANTS 1 TO 3 AND 5 TO 8 :

@ 1. MADAYI KUNHIRAMAN NAIR,
IRINGATH AMSOM DESOM, KOYILANDY TALUK.(DIED)

** 2. MADAYI MADHAVAN NAIR,
IRINGATH AMSOM DESOM, KOYILANDY TALUK.(DIED)

3. MADAYI BALAKRISHNAN NAIR,
IRINGATH AMSOM DESOM, KOYILANDY TALUK.

4. MEENAKSHI AMMA, MADAYI HOUSE,
IRINGATH AMSOM DESOM, KOYILANDY TALUK.

5. KUNHI MATHU AMMA, MADAYI HOUSE,
IRINGATH AMSOM DESOM, KOYILANDY TALUK.

6. DEVI AMMA, MADAYI HOUSE,
IRINGATH AMSOM DESOM, KOYILANDY TALUK.

\$ 7. NADUCHALIL NARAYANAN NAIR,
IRINGATH AMSOM DESOM, KOYILANDY TALUK.(DIED)

@ ADDITIONAL APPELLANTS 8 TO 12 IMPEADED

8. NANIYAMMA, AGED 60 YEARS,
W/O.MADAYI KUNHIRAMAN NAIR, PUTHIYOTTIL MEETHAL,
P.O.IRINGATH, PAYYOLI.

9. RAJAN, AGED 40 YEARS,
S/O.MADAYI KUNHIRAMAN NAIR, PUTHIYOTTIL MEETHAL,
P.O.IRINGATH, PAYYOLI.

10. SATHYAN, AGED 37 YEARS,
S/O.MADAYI KUNHIRAMAN NAIR, PUTHIYOTTIL MEETHAL,
P.O.IRINGATH, PAYYOLI.

AS.No. 122 of 1997 (E)

**## 11. RAVI, AGED 34 YEARS,
S/O.MADAYI KUNHIRAMAN NAIR, PUTHIYOTTIL MEETHAL,
P.O.IRINGATH, PAYYOLI.(DIED)**

**12. DEVI, AGED 30 YEARS,
D/O.MADAYI KUNHIRAMAN NAIR, PUTHIYOTTIL MEETHAL,
P.O.IRINGATH, PAYYOLI.**

**@ ADDITIONAL APPELLANTS 8 TO 12 ARE IMPEADED AS THE LEGAL
REPRESENTATIVES OF THE DECEASED 1ST APPELLANT AS PER ORDER
DATED 11.06.2001 ON C.M.P.NO.1679 OF 2001.**

\$ ADDITIONAL APPELLANTS 13 TO 18 IMPEADED

**13. AMMALU AMMA, AGED 71 YEARS,
W/O.NARAYANAN NAIR, RESIDINIG AT NADUCHALIL HOUSE,
IRINGATH AMSOM DESOM, KOYILANDY TALUK.**

**14. DEVAKI, AGED 50 YEARS,
D/O.NARAYANAN NAIR, RESIDING AT -DO- -DO-**

**15. MEENAKSHI, AGED 48 YEARS,
D/O.NARAYANAN NAIR, RESIDING AT -DO- -DO-**

**16. BALAKRISHNAN NAIR, AGED 46 YEARS,
S/O.NARAYANAN NAIR, RESIDING AT -DO- -DO-**

**17. MUTHU, AGED 42 YEARS,
D/O.NARAYANAN NAIR, RESIDING AT -DO- -DO-**

**18. SHANTHA, AGED 40 YEARS,
D/O.NARAYANAN NAIR, RESIDING AT -DO- -DO-**

**\$ ADDITIONAL APPELLANTS 13 TO 18 ARE IMPEADED AS THE LEGAL
REPRESENTATIVES OF THE DECEASED 7TH APPELLANT, AS PER ORDER
DATED 17.07.2003 ON I.A.NO.837 OF 2003.**

**** ADDITIONAL APPELLANTS 19 TO 22 IMPEADED**

**19. KARTHIAYANI AMMA, AGED 61 YEARS,
W/O.(LATE) MADAYIL MADHAVAN NAIR, MARATHERY THAZHA,
IRINGATH P.O., PAYYOLI (VIA.), KOYILANDY- 673 523.**

**20. RAMACHANDRAN.P, AGED 44 YEARS, S/O.MADHAVAN NAIR,
KANDOTH MEETHAL PARAMBATH HOUSE, TEMPLE GATE P.O.,
VIYALALOM, THALASSERY.**

AS.No. 122 of 1997 (E)

21. DASAN.K.K, S/O.MADHAVAN NAIR,
KIZHAKKE KUNNUMMEL HOUSE, IRINGATH P.O.,
KOYILANDY- 673 523.

22. VINODHAN M.T., S/O.MADHAVAN NAIR,
MANATHERY THAZHA, IRINGATH P.O., KOYILANDY.

**** ADDITIONAL APPELLANTS 19 TO 22 IMPEADED AS THE LEGAL
REPRESENTATIVES OF THE DECEASED 2ND APPELLANT VIDE ORDER
DATED 30.01.2008 ON I.A.NO.302 OF 2007.**

ADDITIONAL APPELLANT 23 IMPEADED

23. SANTHA, W/O.LATE RAVI CHEETHALE,
KODERIKANDY, P.O.POOLAKOOL, VIA. KAKKOTTIL,
VATAKARA.

**## ADDITIONAL APPELLANT 23 IS IMPEADED AS THE LEGAL
REPRESENTATIVES OF THE DECEASED 11TH APPELLANT VIDE ORDER
DATED 08.04.2009 IN I.A.NO.1095 OF 2009.**

**## IT IS RECORDED THAT THE 8TH APPELLANT (ALREADY IN THE PARTY
ARRAY) AS ONE OF THE LEGAL REPRESENTATIVES OF THE DECEASED
11TH APPELLANT VIDE ORDER DATED 08.04.2009 IN C.F.NO.1511 OF 2009.**

A1 TO A11, A13 TO A19, A21, A22 BY ADVS.SRI.N.L.KRISHNAMOORTHY
SRI.K.LAKSHMINARAYANAN
SMT.SATHYA SREEPRIYA
SMT.K.A.MAYA
A12, A20 & A23 BY ADVS. SRI.O.RAMACHANDRAN NAMBIAR
SRI.GEEN T.MATHEW

RESPONDENT(S)/PLAINTIFFS AND DEFENDANTS 4,9,10,12,13,15 AND 16 :

1. THARAMEL KUNHABDULLA,
IRINGATH AMSOM DESOM, KOYILANDY TALUK.
2. THAZHATHE PANISSERI AHMMAD MASTER,
IRINGATH AMSOM DESOM, QUILANDY TALUK.
3. PUTHAN PEEDIKAYIL MOOSA,
IRINGATH AMSOM DESOM, QUILANDY TALUK.
4. MUKAPOOR JUMAYATH PALLI MAHAL COMMITTEE,
REPRESENTED BY ITS PRESIDENT, THAZHATHE VANISSERI
MAMMATH, IRINGATH AMSOM DESOM, QUILANDY TALUK.

AS.No. 122 of 1997 (E)

5. RAGHAVAN NAIR, MADAYI HOUSE,
IRINGATH AMSOM DESOM, KOYILANDY TALUK,
KOZHIKODE DISTRICT.
- & 6. PUTHALATH MEETHAL CHANDU,
IRINGATH AMSOM DESOM, KOYILANDY TALUK.(DIED)
- * 7. PUTHIYOTTIL MEETHAL CHEKKOTTI,
IRINGATH AMSOM DESOM, KOYILANDY TALUK.(DIED)
8. PADINHARE KUNNUMMAL NARAYANAN NAIR,
RYOT, MELADI AMSOM, DESOM, QUILANDY TALUK,
KOZHIKODE DISTRICT.
9. PUTHIYOTTIL MEETHAL NARAYANAN,
RYOT, MELADI AMSOM DESOM, QUILANDY TALUK,
KOZHIKODE DISTRICT.
10. PARAMMAL RADHA, RYOT,
DO AMSOM, DESOM, DO TALUK.
11. MADAI MEETHAL ACHUTHAN NAIR,
RYOT, MELADY AMSOM DESOM, KOYILANDY TALUK.
- * ADDITIONAL RESPONDENTS 12 TO 15
 12. CHIRUTHA, AGED 45 YEARS,
W/O.PUTHIYOTTIL MEETHAL CHEKKOTTI,
IRINGATH AMSOM DESOM, KOYILANDY TALUK.
 13. SUDHA, AGED 25 YEARS,
D/O.PUTHIYOTTIL MEETHAL CHEKKOTTI,
IRINGATH AMSOM DESOM, KOYILANDY TALUK.
 14. SHYLA, AGED 22 YEARS,
D/O.PUTHIYOTTIL MEETHAL CHEKKOTTI,
IRINGATH AMSOM DESOM, KOYILANDY TALUK.
 15. SHYMA, AGED 20 YEARS,
D/O.PUTHIYOTTIL MEETHAL CHEKKOTTI,
IRINGATH AMSOM DESOM, KOYILANDY TALUK.
- * ADDITIONAL RESPONDENTS 12 TO 15 ARE IMPEADED AS THE LEGAL
REPRESENTATIVES OF THE DECEASED 7TH RESPONDENT IN THE APPEAL AS
PER ORDER DATED 09.02.2001 ON C.M.P.NO.315/2001.

AS.No. 122 of 1997 (E)

& ADDITIONAL R16 TO R22 IMPEADED

16. JANU, AGED 54 YEARS,
D/O.PUTHALATH MEETHAL CHANDU, IRINGATH AMSOM DESOM,
KOYILANDY TALUK.
17. NARAYANI, AGED 52 YEARS,
D/O.PUTHALATH MEETHAL CHANDU, -DO- -DO-
18. MADHAVI, AGED 50 YEARS,
D/O.PUTHALATH MEETHAL CHANDU, -DO- -DO-
19. SHANTHA, AGED 48 YEARS,
D/O.PUTHALATH MEETHAL CHANDU, -DO- -DO-
20. KUNHIKELLAPAN, AGED 42 YEARS,
S/O.PUTHALATH MEETHAL CHANDU, -DO- -DO-
21. DEVU, AGED 40 YEARS,
D/O.PUTHALATH MEETHAL CHANDU, -DO- -DO-
22. K.T.CHATHU,
P.O.NO.1875, MANAMA, BAHRAIN.

**& ADDITIONAL R16 TO R22 ARE IMPEADED AS THE LEGAL REPRESENTATIVES
OF THE DECEASED R6 AS PER ORDER DATED 23.07.2003 IN
C.M.P.NO.316 OF 2001.**

\$\$ ADDITIONAL RESPONDENT 23 IMPEADED

23. K.P.PREMAN,
POST BOX NO.1591, SABAH AL SALEM- 44 000,
KUWAIT.

**\$\$ ADDITIONAL RESPONDENT 23 IMPEADED AS THE LEGAL
REPRESENTATIVES OF THE DECEASED 2ND APPELLANT VIDE ORDER
DATED 30.01.2008 IN I.A.NO.302 OF 2007.**

**R3 BY ADV. SRI.R.RAMADAS
R4 BY SRI.N.N.SUGUNAPALAN (SENIOR ADVOCATE)
ADV. SRI.S.SUJIN
R12TO15 BY ADV. SMT.DEEPAA G. PAL
R16TO21 BY ADV. SMT.DEEPAA G. PAL**

**THIS APPEAL SUITS HAVING BEEN FINALLY HEARD ON 03-06-2015,
THE COURT ON 03-07-2015 DELIVERED THE FOLLOWING:**

Msd.

C.R.

P.B.SURESH KUMAR, J.

= = = = =

A.S.No.122 of 1997.

= = = = =

Dated this the 3rd day of July, 2015.

J U D G M E N T

Defendants 1 to 3 and 5 to 8 in a suit for declaration of title and recovery of possession are the appellants.

2. Respondents 1 and 2 instituted the suit initially before the Munsiff Court, Payyoli, as O.S.No.92 of 1976, seeking a decree of permanent prohibitory injunction restraining the first defendant from trespassing into plaint A schedule property. The suit was instituted in a representative capacity, representing the members of the Muslim community offering worship at Mukapoor Mosque situated adjacent to plaint A schedule property. The suit was dismissed by the trial court and the decision of the trial court was confirmed by the District Court, Kozhikode in A.S.No.118 of 1978. The plaintiffs have taken up the matter before this Court in S.A.No.820 of 1982 and this Court

remitted the suit to the trial court for fresh disposal with a direction to afford the plaintiffs an opportunity to amend the plaint. Thereupon, the plaint was amended and a prayer for declaration of the title of plaint A schedule property and a prayer for recovery of possession of plaint B schedule property on the strength of the title were incorporated. Additional pleadings were also incorporated in the plaint. In the additional pleadings, it was stated that the defendants have trespassed into plaint B schedule property, which is a portion of plaint A schedule property. As the valuation of the suit exceeded the pecuniary jurisdiction of the court after the amendment of the plaint, the suit was re-presented before the Sub Court, Koyilandy and renumbered as O.S.No.66 of 1992. In the meanwhile additional plaintiffs 3 and 4 have come on record and additional defendants 2 to 16 were impleaded.

3. The essence of the case of the plaintiffs as pleaded in the plaint is that the plaintiffs are Muslims offering worship at Mukapoor Mosque, near plaint A

schedule property; that plaint A schedule property which is being used for the last more than 300 years for burying dead bodies of those who are offering worship at Mukapoor Mosque is a property given to the Mosque by way of grant by the then British Government and that the first defendant who has no right whatsoever in the property has trespassed into a portion of the said property.

4. The essence of the contentions of the defendants is that the plaint schedule property belonged to Avinhattidam tharawad; that the said tharawad granted a lease in respect of the property on 23.9.1923 in favour of one Madayi Mathu Amma and on her death, the property devolved on her children including one Anandan Nair. The remaining children of Madayi Mathu Amma assigned their rights over plaint A schedule property to one Kannan Nair and the right of Anandan Nair over the property devolved on one Narayanan Nair. On the death of Kannan Nair, his rights devolved on his wife and children and the properties are now held jointly by them and Narayanan Nair. The

averments in the plaint that plaint A schedule property is being used from time immemorial as a burial ground by the members of the Muslim community near the property was specifically denied by the defendants in their written statement.

5. The evidence in the case consists of the oral testimonies of PW1 to PW6 and Exts.A1 to A19 documents on the side of the plaintiffs and the oral testimony of DW1 and Exts.B1 to B23 documents on the side of the defendants. The reports submitted by the Commissioners appointed in the suit were marked as Exts.C1 to C3.

6. The trial court found that though plaint A schedule property does not have conspicuous indications of a burial ground, the same can only be regarded as part of the burial ground attached to the Mosque. The trial court also held that the materials on record do not indicate that the defendants have established title to plaint A schedule property as claimed by them. Consequently, the trial court decreed the suit, declaring the title of the plaintiffs over

plaint A schedule property and permitted the plaintiffs to recover plaint B schedule property from the defendants. The defendants are aggrieved by the decision of the trial court and hence this appeal.

7. Heard Sri.K.Lakshminarayanan, the learned counsel for the appellants and Sri.N.N.Sugunapalan, the learned Senior Counsel for the contesting respondents.

8. Paragraph 8 of the judgment of the trial court indicates that the court below declared the title of the plaintiffs over plaint A schedule property, applying the doctrine of lost grant. The learned Senior Counsel appearing for the plaintiffs also supported the impugned judgment applying the doctrine of lost grant. As such, the scope of the doctrine of lost grant needs to be examined. A conspectus of the authorities on the doctrine of lost grant indicates that lost grant is a method recognised by law to acquire a right over a property by long immemorial use and enjoyment. Enjoyment of a property for a considerably long period has been held to result in a right on the supposition

that at some distant point of time the right must have been granted. The fiction of lost grant proceeds on the theory that a grant was made, but proof whereof is lost in obscurity. The authorities indicate that a plea of immemorial user leading to the inference of a lost grant should be specifically raised. To apply the doctrine of lost grant, it is necessary to establish long continuous and peaceful enjoyment of the property. It is a presumption made for securing ancient and continuous possession which could not otherwise be reasonably accounted for. It is seen that the doctrine of lost grant is only a presumption of fact that the user was referable to a lawful grant made by the owner of the land and the same can therefore, be rebutted by evidence that the existence of such grant is impossible [See **Manu Mangal v. Dhaniram** (AIR 1963 Orissa 97)]. To raise such a presumption, necessarily there should be a capable grantor and a capable grantee [See **Monohar Das Mohanta v. Charu Chandra Pal** (AIR 1955 SC 228)]. An indeterminate and fluctuating body of persons cannot

acquire right over a property by long immemorial use and enjoyment [See **Zahirul Islam v. Mohd. Usman** [(2003) 1 SCC 476], **Raja Braja Sundar Deb v. Moni Behara** (AIR 1951 SC 247) and **Nani Gopal v. Kshitish Chandra** (AIR 1952 Calcutta 108)]. The gist of the principle is that when the court finds an open uninterrupted enjoyment of property for a long period unexplained, it is reasonable to find a lawful origin for the right in question [See **Bhupati Bhusan v. Jadunath Ghosal** (AIR 1955 Calcutta 70)].

9. With the aforesaid principles in mind, I shall now proceed to decide the question as to whether a case of lost grant has been made out by the plaintiffs to use plaint A schedule property as a burial ground. At the outset, I must point out that though it is stated in the plaint that plaint A schedule property is being used by the plaintiffs as a burial ground for more than 300 years, there is no averment in the plaint that their immemorial user of the property leads to the inference of a lost grant. Further, as noticed above, the suit has been instituted by the plaintiffs representing the

members of the Muslim community offering worship in the Mosque situated adjacent to plaint A schedule property in accordance with the provisions in Order 1 Rule 8 of the Code of Civil Procedure. The case of the plaintiffs is that the members of the Muslim community who are offering worship in the said Mosque have acquired a right to use plaint A schedule property as a burial ground. There cannot be any dispute to the fact that the members of the Muslim community in a locality are indeterminate and fluctuating. In the light of the decisions referred to above, the plaintiffs cannot claim any right to use plaint A schedule property as a burial ground on the basis of the fiction lost grant. That apart, as noticed above, lost grant is a presumption made for securing ancient and continuous possession which could not otherwise be reasonably accounted for and therefore, the same can be rebutted by the evidence that the existence of such a grant was impossible. The specific pleading of the plaintiffs in the plaint as regards the grant is that about 300 years ago, the then British Government

permitted the members of the Muslim community who are offering worship in the Mosque adjacent to plaint A schedule property to use plaint A schedule property as a burial ground. It is not disputed that the plaint A schedule property comprises in Survey No.35/1 of Iringath Amsom Desom, corresponding to resurvey No.8/2C. Exts.A6, A9 and A11 are the extracts of the settlement registers pertaining to 7.22 acres of property in old Survey No.35/1. In Ext.A6, the name of the title holder is shown as Avinjatta Muppil Nair. In Ext.A9, though the name of the title holder is shown as Avinjatta Muppil Nair, the said name is attempted to be erased. In Ext.A11, there is no entry as to the name of the title holder. Exts.A6, A9 and A11 indicate that the plaint A schedule property is a private land. The plaintiffs have also no case that the suit property was a Government land. As such, if at all there has been a grant, the same could have been made only by the original jenmi. The case of the plaintiffs that there was a grant in respect of the suit property by the British Government, in the

circumstances, was an impossibility.

10. As noticed above, the most important ingredient to be established in a case where a plea of lost grant is raised is the user of the property from time immemorial. According to me, the plaintiffs have not established user of plaint A schedule property from time immemorial as a burial ground. It is not disputed that plaint A schedule property lies on the southern side of Payyoli-Perambra Road. Mukapoor Mosque is situated on the northern side of the said road. The plaint A schedule property is therefore not lying adjacent to the Mosque. It is not disputed that there exists a burial ground adjoining the Mosque. It has come out in evidence that the records maintained at the local Panchayat do not indicate that plaint A schedule property is a public burial ground. The court below found on facts that the plaint A schedule property does not have any conspicuous indications of a burial ground. As regards the user, the Advocate Commissioner deputed by the court below could find only indications of a few burials in the suit

property and that too, made not recently. The indications of the burials were noticed by the advocate Commissioner on the eastern extremity of the suit property. Ext.C2 report of the Advocate Commissioner indicates that a substantial portion of plaint A schedule property is lying as barren land. Ext.C1 is the plan prepared by the Advocate Commissioner. In Ext.C1, plaint A schedule property is shown as plots A, A1, A2, A3, A4 and B1. Among the said plots, plot A is the largest plot. In Ext.C3 report, the Advocate Commissioner has categorically stated that indications of burial is seen only in a small portion of plot A. The Commissioner has not noted any indications of burial in the remaining plots. Though the Commissioner has stated that two burials were found in plot B1, the stand taken by the contesting defendants concerning the said burials is that plot B1 is not part of the property over which they claim rights. In the light of the aforesaid facts and evidence, I am unable to hold that the plaintiffs have established that plaint A schedule property is being used from time immemorial as a

burial ground. Even assuming that the plaintiffs have established that plaint A schedule property is being used by the members of the Muslim community in the locality as a burial ground, it can only be presumed that they have been permitted to do so by the original owner of the property. Such a presumption does not lead to the conclusion that the plaintiffs have acquired title to the property. As such, the impugned decree declaring the title of the plaintiffs over the plaint A schedule property and granting recovery of possession of plaint B schedule property is unsustainable.

11. The learned Senior Counsel for the contesting respondents/plaintiffs argued, relying on the observations made by the trial court that the contesting defendants have not established their title to plaint A schedule property. He has also contended, relying on the decision of the Apex Court in **Syed Mohd. Salie Labbai v. Mohd. Hanifa** (AIR 1976 SC 1569) that the evidence on record would indicate that the plaint A schedule property is a public graveyard. According to him, Exts.A6, A9 and A11 extracts of the

settlement registers are sufficient for the court to infer that plaint A schedule property is a public graveyard.

12. The suit in the instant case is a suit for declaration of title and recovery of possession on the strength of title. As such, the burden is on the plaintiffs to establish their title to the plaint schedule property. True, in the matter of examining the case of title set up by the plaintiffs, the court is also entitled to consider the rival title set up by the defendants. But, it is now settled that the weakness of the defence or the failure of the defendants to establish the title set up by them would not enable the plaintiffs to claim the decree prayed for in the suit [See **Ramachandra Sakharam Mahajan v. Damodar Trimbak Tanksale** [(2007)6 SCC 737]. As such, there is no merit in the contention raised by the learned counsel for the contesting respondents that the appellants have not established their title to plaint A schedule property. Coming to the arguments raised based on the revenue records, it has to be pointed out that the revenue records are not documents of

title. It merely raises a presumption in regard to use of the property [See **State of Andhra Pradesh v. Star Bone Mill and Fertiliser Company** [(2013)9 SCC 319]. In the instant case, in Exts.A9 and A11 settlement registers, it is stated that the property is a burial ground, whereas, in Ext.A6, such an entry is absent. As noticed above, Ext.A6 extract seems to be the latest, in so far as it contains the re-survey number of the property as well. In **Ballabh Das v. Nur Mohammad** (AIR 1936 PC 83), the Privy Council held that a few burials in a plot of land do not lead to the inference that the property is dedicated for the use of the public and to infer dedication of property, it has to be established that a number of instances adequate in character, number and extent to justify an inference that the plot of land is a burial ground is necessary. The said proposition has been reiterated by the Apex Court in **Mohd. S. Labbai v. Mohd. Hanifa** (AIR 1976 SC 1569). The relevant extract of the said judgment reads thus:

“The following rules in order to determine whether a graveyard is a

public or a private one may be stated:

(1)that even though there may be no direct evidence of dedication to the public, it may be presumed to be a public graveyard by immemorial user i.e. where corpses of the members of the Mahomedan community have been buried in a particular graveyard for a large number of years without any objection from the owner. The fact that the owner permits such burials will not make any difference at all;

(2)that if the grave-yard is a private or a family graveyard then it should contain the graves of only the founder, the members of his family or his descendants and no others. Once even in a family graveyard members of the public are allowed to bury their dead, the private graveyard sheds its character and becomes a public graveyard;

(3)that in order to prove that a graveyard is public by dedication it must be shown by multiplying instances of the character, nature and extent of the burials from time to time. In other words, there should be evidence to show that a large number of members of the Mahomedan community had buried their corpses from time to time in the graveyard. Once this is proved, the Court will presume that the graveyard is a public one; and

(4) that where a burial ground is mentioned as a public graveyard in either a revenue or historical papers that would be a conclusive proof to show the public character of the graveyard.”

(underline supplied)

The materials on record do not indicate that plaint A schedule property is used as public graveyard. The materials only indicate that in a portion of plaint A schedule property, indications of burials made years ago are available. Merely for the reason that indications of burials

are available in an insignificant portion of the property, it cannot be held that plaint A schedule property has become a public graveyard by dedication. There is, therefore, no substance in the said argument of the learned Senior Counsel also.

In the result, the appeal is allowed, the impugned judgment and decree are set aside and the suit O.S.No.66 of 1992 on the file of the Sub Court, Koyilandy is dismissed.

Sd/-
P.B.SURESH KUMAR
(JUDGE)

Kvs/-

// true copy //

PA TO JUDGE.