

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

MONDAY, THE 8TH DAY OF JUNE 2015/18TH JYAISHTA, 1937

CRP.No. 681 of 2010

AGAINST THE JUDGMENT AND DECREE IN OS 117/1996 of PRINCIPAL
MUNSIFF COURT,TRIVANDRUM DATED 08-11-2006

REVISION PETITIONERS/PLAINTIFFS:

1. C.RAVI, AGED 50 YEARS,
S/O.CHELLAPPAN, RESIDING AT VARUVILAKOM MUDUMBIL
VEEDU, GOWREESAPATTOM, THIRUVANANTHAPURAM.
(Died. LRs impleaded)
2. USHA RAVI, W/O.C.RAVI, DO.. DO..

BY ADVS.SRI.RAM MOHAN.G.
SRI.G.P.SHINOD
SRI.MANU V.

RESPONDENTS/DEFENDANT AND ADDITIONAL DEFENDANT:

1. ROSHNI PONNOOSE, AGED ABOUT 68 YEARS,
RESIDING AT KUTTIKATTU HOUSE, THEKKUMMOODU,
THIRUVANANTHAPURAM.
2. GEORGE JACOB, KUTTIKATTU BUNGLOW,
THEKKUMMOODU, THIRUVANANTHAPURAM.

ADDL. R3 TO R6 IMPLEADED:

ADDL.R3 SOBHA, D/O. USHA, AGED 39 YEARS,
RESIDING AT USHA BHAVAN, T.C. 13/2152 (5),
GOWREESAPATTOM, PATTOM PALACE,
THIRUVANANTHAPURAM - 695 004.

ADDL.R4 SHIBU, S/O. LATE RAVI, AGED 38 YEARS, - DO -
PRESENTLY WORKING AT CELLPORT GENERAL TRADING,
L.L.C, P.O. BOX No.126887, NAIF ROAD, DEIRA,
DUBAI, U.A.E.

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ADDL.R5 DEEPA, D/O. USHA, AGED 36, - DO-
PRESENTLY WORKING AT PREMIER SCHOOL,
INTL (L.L.C), SUPPORT STAFF ACCOMMODATION
LICENCE No.586454, P.O. BOX No.30178
DUBAI, U.A.E.

(Additional respondents 3 to 5 are impleaded. It is also recorded that 1st petitioner died and the 2nd petitioner and the additional respondents 3 to 5 are the legal representatives of the deceased 1st petitioner vide order dtd.24.9.14 in I.A.2158/14).

R1 & R2 BY ADV. SRI.G.S.REGHUNATH
ADDL.R3,R4,R5 BY ADV. SRI.GOVIND PADMANAABHAN

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 08-06-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.BHAVADASAN, J.

Civil Revision Petition No.681 OF 2010

Dated this the 8th day of June, 2015.

O R D E R

In a suit under Section 6 of Specific Relief Act for recovery of possession, plaintiffs who are the revision petitioners herein claimed possession over 8 cents of property by virtue of Exts.A1 and A2 documents. Exts.A1 and A2 are two sale deeds namely, sale deed Nos.4408/1994 and 5507/1994 of SRO Pattom. Ext.A1 is in favour of the couple and Ext.A2 is in favour of wife alone. The 1st defendant possessed property on the eastern side of plaint schedule property which is covered by two documents mentioned above. Complaining about dispossession and also alleged trespass by the defendants into the suit property, suit was laid. Initially, they instituted O.S.No.1/1996 for declaration of title and injunction. Later on it is alleged that the defendants trespassed into the suit property and constructed a granite foundation across the same. The trespass portion is shown as B schedule property.

2. The 1st defendant resisted the suit. She pointed out that the plaintiffs have got title and possession only in respect of 4 cents of property comprised in survey No.883 of Pattom village. It is also contended that document No.1507/1994 was executed by the plaintiffs knowing that there was no such property in existence and it is only a sham document showing the very same property shown in the earlier document. It is also claimed that the property of the 1st defendant and her brother George Jacob who is impleaded as additional 2nd defendant lie as a compact plot consisting of an area of 34 cents and out of that 34 cents, 17 cents of land is comprised in survey No.884/1, 8 cents in survey No.885/1 and 9 cents in survey No.884/2. These properties lie on the eastern and northern sides of plaint schedule property. Complaining about the mischief played by the survey authorities, it is contended that the plaintiffs have not been in possession of the property and that the granite wall was put up to re-enforce the barbed wire fence separating the property of the 1st defendant and her brother from the plaintiffs' property.

3. The additional 2nd defendant filed a separate written

statement making the similar contentions as that of the 1st defendant.

4. The trial court raised necessary issues for consideration. The evidence consists of the testimony of PWs 1 to 4 and the documents marked as Exts.A1 to A15 on the side of the plaintiffs. The defendants examined DWs 1 to 4 and marked Exts.B1 to B7. CWs 1 and 2 were also examined and Exts.C1 and C1(a) are the commission report and plan. Initially the suit was decreed on 21.11.1998.

5. Aggrieved by the judgment and decree, the defendants preferred CRP No.2702/1998 before this Court. This Court finding that the properties have not been properly identified remanded the matter for fresh consideration. After the matter went back, measurements were done and commission reports were filed.

6. The contention after the remand was that the plaintiffs emphasised that there were 8 cents comprised in survey No.883 of Pattom village while the defendants contended that that survey number contains only 4 cents. It may be noticed here

that the plaint was also amended in the meanwhile and boundaries were described with respect to survey numbers.

7. It is seen from the order of the lower court that Commissioner's report was taken objection to by the plaintiffs and the court below, after going through Ext.C1 series, found that the evidence of CWs 1 and 2 to be convincing enough and the identification made by the Commissioner along with the Surveyor was proper and correct. The court below also noticed that the plaintiffs have no claim over any property other than the property comprised in survey No.883. It is significant to notice that the defendants have no claim in respect of the property in survey No.883. It is therefore clear that the properties of the plaintiffs and defendants lie in two separate and distinct survey numbers.

8. The trial court found that as per the amended plaint, B schedule property is on the northern side of AG line shown in Commissioner's report which is comprised in survey No.884 for which the plaintiffs have no claim. In short, accepting the Commissioner's report, the plaintiffs were non suited.

9. In this Civil Revision Petition, plaintiffs have produced additional documents showing re-survey plan and also the Field Measurement Book contending that the finding of the trial court that survey No.883 contains only 4 cents cannot be correct.

10. It is significant to notice that it would appear from the proceedings, plaint and evidence on record that the suit was essentially based on Ext.A2. In a suit under Section 6 of Specific Relief Act, title is irrelevant and only possession as envisaged under the provision is relevant. The court below probably was in error in going on the question of title between the parties and the only question that needed to be gone into was possession. The court below is justified in finding that since the plaintiffs did not claim any property in survey Nos.884 and 885 and going by the Commissioner's report there was only 4 cents in survey No.883, possession of B schedule had necessarily to be with the defendants. Based on the available evidence, that finding could not be interfered with. However, the observation regarding title is unwarranted since question of title is irrelevant in a suit under Section 6 of Specific Relief Act.

This Civil Revision Petition is dismissed with the observation that the question of title is left open to be decided in appropriate proceedings and the plaintiffs are entitled to agitate their title in accordance with law. If such a suit is laid, the defendants will be entitled to file a written statement also. In appropriate proceedings, plaintiffs in this suit will be at liberty to contend that the finding of the court below that there is only 4 cents in survey No.883 is not correct and there is more extent of property available.

Sd/-

**P.BHAVADASAN
JUDGE**

smp

// True Copy //

P.A. to Judge.