

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

FRIDAY, THE 27TH DAY OF FEBRUARY 2015/8TH PHALGUNA, 1936

FAO.No. 194 of 2009

AGAINST THE JUDGMENT IN AS 58/2008 of SUB COURT, PERUMBAVOOR
DATED 24-01-2009

AGAINST THE JUDGMENT IN OS 606/1997 of MUNSIF COURT, PERUMBAVOOR
DATED 08-03-2004

APPELLANT/RESPONDENT/PLAINTIFF:-

RAJAPPAN, AGED 47,
S/O.KRISHNAN,
KALLARKUDY HOUSE,
KODALAPPAD KARA,
KOOVAPPADY VILLAGE.

BY ADV. SRI.T.RAJESH

RESPONDENTS/APPELLANT-RESPONDENTS 2 TO 16/DEFENDANT:-

1. KUTTY, AGED ABOUT 65, W/O.KUTTAPPAN,
MANJUMMAL HOUSE, MANJAPRA KARA, KALADY VILLAGE.

2. POULOSE, AGED 43, S/O.POULO,
MANICKATHAN HOUSE, KODALAPPADU KARA
KOOVAPPADY VILLAGE.

3. KUTTAN, AGED 38, S/O.SANKARAN,
KALLARKUDY HOUSE, KODALAPPADU KARA
KOOVAPPADY VILLAGE.

4. SUBRAMANIAN, AGED ABOUT 40,
S/O.LATE BALAKRISHNAN, KALLARKUDY HOUSE
KOOVAPPADY KARA, DO. VILLAGE.

5. INDIRA, AGED ABOUT 29,
D/O.LATE BALAKRISHNAN, W/O.MOHANAN, PARAMBIKUDY HOUSE
IRINGOLE KARA, (VATTASSERYMONAPPADY BHAGOM)
PERUMBAVOOR VILLAGE.

6. SAKUTHALA, AGED ABOUT 30,
D/O.LATE BALAKRISHNAN, KOLLARKUDY HOUSE
KODALAPPADU KARA, KOOVAPPADY VILLAGE.

7. PUSHPA, AGED ABOUT 38,
D/O.LATE BALAKRISHNAN, W/O.KRISHNANKUTTY
PUTHUMANAKUDIYIL HOUSE, VADATTUPARA KARA
(MARTHOMA CITY) KUTTAMPUZHA VILLAGE.

(.....2)

8. SURESH, AGED ABOUT 28,
S/O.LATE BALAKRISHNAN, KALLARKUDY HOUSE
KODALAPPADU KARA, KOOVAPPADY VILLAGE.

9. SURENDRAN, AGED ABOUT 26,
S/O.LATE BALAKRISHNAN, KALLARKUDY HOUSE
KODALAPPADU KARA, KOOVAPPADY VILLAGE.

10. SUDHAKARAN, AGED 24,
S/O.LATE BALAKRISHNAN, KALLARKUDY HOUSE
KODALAPPADU KARA, KOOVAPPADY VILLAGE.

11. SUNIL, AGED 22, S/O.LATE BALAKRISHNAN,
KALLARKUDY HOUSE, KODALAPPADU KARA
KOOVAPPADY VILLAGE.

12. SUMA, AGED 20, D/O..LATE BALAKRISHNAN,
W/O.REJI, PUTHUMANAKUDIYIL HOUSE
VADATTUPARA (MARTHOMA CITY).

13. KAMALAKSHI @ KAMALAM, AGED ABOUT 57,
KODALAPPADU KARA, KOOVAPPADY VILLAGE.

14. RENJINI, AGED 42 YEARS, W/O.LATE BABU,
NJARASSLA HOUSE, VADAKKUMBHAGAM KARA
MANJAPRA VILLAGE.

15. SYAMAPRASAD, AGED 16 YEARS (MINOR)
S/O.LATE BABU, NEASSARELE HOUSE, VADAKKUMBHAGAM KARA
MANJAPRA VILLAGE., REP. BY HIS MOTHER RENJINI.

16. SETHULAKSHMI, AGED 14 YEARS,
(MINOR D/O.LATE BABU, NJASSARALA HOUSE
VADAKKUMBHAGAM KARA, MANJAPRA VILLAGE.
REP. BY HIS MOTHER RENJINI.

(*) ADDL.17. ELSY, W/O.LATE PATHROSE,
MAROTHKUDY, KODALAPPADU,
KOOVAPPADY.

"" 18. JINOY, S/O.LATE PATHROSE,
MAROTHKUDY, KODALAPPADU,
KOOVAPPADY.

"" 19. JEEMON, S/O.LATAE PATHROSE,
KODALAPPADU, KOOVAPPADY.

"" 20. NALINI, W/O.SUBRAMANIAN,
KALLARKATTY HOUSE,
KODALAPPADU, KOOVAPPADY.

"" 21. VISHNU, S/O.SUBRAMANIAN,
KALLARKATTY HOUSE,
KODALAPPADU, KOOVAPPADY.

-: 3 :-

" 22. SREEKUTTAN, S/O.SUBRAMANIAN,
KALLARKATTY HOUSE,
KODALAPPADU, KOVAPPADY.

R3 BY ADV. SRI.LIJU. M.P
R13 & ADDL.20-R22 BY ADV. SRI.S.VINOD BHAT
R13 & ADDL.20-R22 BY ADV. SRI.LEGITH T.KOTTAKKAL

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON
27-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Kvs/-

P.B.SURESH KUMAR, J.

= = = = =
F.A.O.No.194 of 2009.
= = = = =

Dated this the 27th day of February, 2015.

J U D G M E N T

The decision in A.S.No.58 of 2008 on the file of the Court of the Subordinate Judge, Perumbavoor by which the Suit O.S.No.606 of 1997 on the file of the Court of the Munsiff, Perumbavoor was remitted for fresh disposal is under challenge in this appeal.

2. O.S.No.606 of 1997 as amended was a suit for a declaration of the title of the plaintiff over the plaint schedule property by adverse possession and limitation and for ancillary reliefs. The case of the plaintiff is that the suit property belonged to the brother of his father Parameswaran; that he is in possession of the suit property for the last more than twenty five years and the defendants 1 and 2 are trying to trespass upon the suit property on the strength of Exts A5 and A6 sale deeds executed by the third defendant who claims to be the wife of Parameswaran.

Defendants 4 and 5 in the suit are the children of the brothers of Parameswaran.

3. The third defendant contested the suit contending *inter alia* that the suit property belonged to her husband Parameswaran and on his death the same devolved on her and therefore Exts.A5 and A6 sale deeds executed by her are valid and binding on the property.

4. The trial court though decreed the suit initially in part, in appeal by the defendants, the appellate court remitted the suit for fresh disposal. After the remand, the trial court decreed the suit declaring the title of the plaintiff over plaint schedule property by adverse possession and limitation. Consequential reliefs were also granted.

5. The third defendant challenged the decision of the trial court again in appeal. In the appeal, the fifth defendant had contended that the suit property belonged to one Anchakkallan and the same was partitioned among his children and that the plaint schedule property is the property allotted to his predecessor Sankaran in the said

partition. It was also contended by the fifth respondent in the appeal that he was not served summons in the suit and consequently he could not appear and contest the suit effectively.

6. The appellate court found that summons was not seen served on the fifth defendant in the suit and in so far as the trial court declared the title of the plaintiff by adverse possession and limitation without the owner of the property in the array of parties, the suit has to be decided afresh. Consequently, the decision of the trial court was set aside and the matter was again remitted for fresh disposal. The plaintiff is aggrieved by the said decision of the appellate court and hence this appeal.

7. Heard the learned counsel for the appellant and the learned counsel for respondents 4, 14, 20, 21 and 22.

8. When this appeal was taken up for hearing, the limited submission made by the learned counsel for the appellant was that in so far as the appellate court took the view that the suit needs to be decided afresh, he may be

afforded an opportunity to amend the pleadings. The limited prayer sought for by the appellant is not opposed by the contesting respondents. Even otherwise, going by the findings rendered by the appellate court, the suit lacks proper pleadings. In the circumstances, I am of the view that the request of the appellant/plaintiff is only fair and reasonable.

In the result, the appeal is disposed of clarifying the impugned order to the effect the plaintiff will be entitled to amend his pleadings. Needless to say, in the event the plaint is amended, the defendants will be entitled to file additional written statements also.

**Sd/-P.B.SURESH KUMAR,
(Judge)**

Kvs/-

// true copy //

PA TO JUDGE.