

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

FRIDAY, THE 26TH DAY OF JUNE 2015/5TH ASHADHA, 1937

FAO.No. 132 of 2015 ()

AGAINST THE ORDER IN IA NO.977/2015 IN A.S.NO.112/2014 ON THE FILE OF
THE HONOURABLE ADDITIONAL SUB COURT, IRINJALAKKUDA, DATED 20.03.2015.

APPELLANT/RESPONDENT:

ANNAMMA, AGED 75 YEARS
D/O. KALLELY ANTHONY, CHALAKUDY DESOM
KIZHAKKE CHALAKUDY VILLAGE, THRISSUR DISTRICT.

BY ADVS.DR.PAULY MATHEW MURICKEN
SRI.O.P.JOS WINSON

RESPONDENT/PETITIONER:

GEORGE, AGED 64 YEARS
S/O. KALLELY ANTHONY, CHALAKUDY DESOM
KIZHAKKE CHALAKUDY VILLAGE, THRISSUR DISTRICT.
PIN - 680 584.

THIS FIRST APPEAL FROM ORDERS HAVING COME UP FOR ADMISSION
ON 26-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

F.A.O.132/2015

APPENDIX

PETITIONER'S ANNEXURES

ANNEXURE 1: PHOTOCOPY OF THE JUDGMENT DATED 25.06.2014 PASSED BY THE
HONOURABLE MUNSIFF COURT, CHALAKUDY IN O.S.NO.385/2008.

RESPONDENT' S ANNEXURES: NIL

// TRUE COPY//

P A TO JUDGE

smm

P.B.SURESH KUMAR, J.

F.A.O.No.132 of 2015

Dated this the 26th day of June, 2015

JUDGMENT

The order on I.A No.977 of 2015 in A.S No.112 of 2014 on the file of the Sub Court, Irinjalakuda is under challenge in this appeal.

2. A.S No.112 of 2014 is preferred against the decree and judgment in O.S No.385 of 2008 on the file of the Munsiff Court, Chalakudy. The said suit was one for fixation of boundary. The suit was decreed on 25.6.2014, directing the fixation of the southern boundary of the plaint schedule property owned by the plaintiff through the southern line of the plot marked as 'J' in Ext.C2(a) plan appended to the decree. Aggrieved by the decision of the trial court, the ninth defendant preferred the appeal referred to above. Ninth defendant is the owner of the property on the south of the plaint schedule property. It is seen that the dispute between the plaintiff and the ninth defendant

relates to the ownership of the plot 'J' in Ext.C2(a) plan. According to the ninth defendant, the southern boundary of the plaint schedule property is to be fixed through the northern line of the plot 'J'.

3. In the course of the proceedings, the respondent preferred I.A No.997 of 2015 alleging that on the strength of the decree passed by the trial court, the appellant is attempting to trespass into the plot 'J' referred to above. Though the application was opposed by the appellant contending that the interim order of stay granted by the trial court does not prevent him from enjoying the property, the appellate court passed the impugned interim order of injunction restraining the appellant from trespassing into plot 'J' (wrongly shown as plot 'I').

4. The impugned order does not indicate that the appellate court has not considered the contentions of the parties. Nevertheless, in the light of the order which I propose to pass in this appeal, I do not think that an examination of the correctness of the order is necessary for the purpose of this appeal. The appeal in which the impugned order is passed is one preferred in

the year 2014. The dispute pertains to the southern boundary of the plaint schedule property. In the said circumstances, I am of the view that the grievances of the appellant can be redressed by directing the appellate court to dispose of A.S No.112/2014, untrammelled by the view taken in the impugned order.

In the result, the appeal is disposed of directing the Sub Court, Irinjalakkuda to dispose of A.S.No.112 of 2014, untrammelled by the view taken in the impugned order, within a period of eight weeks from today. All the interlocutory applications in the appeal are closed.

P.B.SURESH KUMAR, JUDGE.

smm