

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

THURSDAY, THE 13TH DAY OF AUGUST 2015/22ND SRAVANA, 1937

FAO (RO).No. 22 of 2015

**ORDER DTD.30.8.2014 IN AS 143/2005 OF SUB COURT, KOTTARAKKARA
OS.NO.390/1998 OF MUNSIF COURT, KOTTARAKKARA**
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APPELLANT(S)/RESPONDENT/PLAINTIFF:

**A.R.UNNIKRISHNAN PILLAI, AGED 46 YEARS,
S/O.RAGHAVAN PILLAI, ALANKOTTU THEKKETHIL VEEDU,
CHERUVAKKAL MURI, VELINALLOOR VILLAGE,
KOTTARAKKARA TALUK, NOW RESIDING AT REVATHI BHAVAN,
CHERUVAKKAL MURI, ELAMADU VILLAGE, AYOOR,
KOTTARAKKARA.**

**BY ADVS.SRI.M.V.THAMBAN
SRI.R.REJI
SMT.THARA THAMBAN
SRI.B.BIPIN
SRI.ARUN BOSE**

RESPONDENT(S)/APPELLANT/DEFENDANT:

- 1. LALITHAMMA
D/O.PANKAJAKSHY AMMA, ALANKOTTU MELATHIL VEEDU
CHENKOOR MURI, VELINALLOOR VILLAGE, CHERUVAKKAL (PO)
AYOOR, KOTTARAKKARA TALUK - 691 530.**
- 2. SOMAN PILLAI,
ALANKOTTU MELATHIL VEEDU, CHENKOOR MURI,
VELINALLOOR VILLAGE, CHERUVAKKAL (P.O.), AYOOR,
KOTTARAKKARA TALUK - 691 530.**
- 3. PANKAJAKSHY AMMA,
ALANKOTTU MELATHIL VEEDU, CHENKOOR MURI,
VELINALLOOR VILLAGE, CHERUVAKKAL (PO), AYOOR,
KOTTARAKKARA TALUK - 691 530.**

R1-R3 BY ADV. SRI.ALEXANDER GEORGE

**THIS FIRST APPEAL FROM ORDER - REMAND ORDER HAVING
BEEN FINALLY HEARD ON 13-08-2015, THE COURT ON
THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

P.B.SURESH KUMAR, J.

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F.A.O.(RO).No.22 of 2015.

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Dated this the 13th day of August, 2015.

J U D G M E N T

The decision of the Sub Court, Kottarakkara in A.S.No.143 of 2005 by which the suit O.S.No.390 of 1998 on the file of the Court of Munsiff, Kottarakkara was remitted for fresh disposal is under challenge in this appeal.

2. O.S.No.390 of 1998 is a suit for declaration of title, fixation of boundary and consequential injunction. The parties are relatives. The third defendant is the younger sister of the mother of the plaintiff. The first defendant is the daughter of the third defendant and the second defendant is the husband of the first defendant. By virtue of Ext.B1 partition deed, the mother of the plaintiff obtained 72 cents of property. According to the plaintiff, out of the said 72 cents, his mother settled 47 cents

situated on its south to his sister and he acquired the said 47 cents from his sister on 17.4.1995 as per Ext.A1 sale deed. The case of the plaintiff is that he is in possession of the 47 cents covered by Ext.A1 sale deed and that the defendants are attempting to trespass into a portion of the said 47 cents.

3. The defendants resisted the suit by filing a written statement. According to them, the third defendant obtained 36 cents of property lying on the east of the 72 cents allotted to the mother of the plaintiff as per Ext.B1 partition deed and that the plaintiff has encroached upon a portion of the said 36 cents. They also claimed a decree against the plaintiff by way of counter claim for fixation of the boundary of the said 36 cents obtained by the third defendant as per Ext.B1 partition deed.

4. In the course of the trial, a Commissioner was deputed by the trial court and the Commissioner filed Exts.C2 and C4 reports and Ext.C5 plan. The Commissioner

has shown the plaint schedule property in Ext.C5 plan as 'GHIJKLMN'. Likewise, the Commissioner has shown the property of the defendants in Ext.C5 plan as 'DEHG'. Going by the reports of the Advocate Commissioner, the extent of the plaint schedule property was found to be 46.806 cents and the extent of the defendants' property was found to be 28.306 cents. The trial court accepted Ext.C5 plan and decreed the suit fixing GH line in Ext.C5 plan as the boundary separating the properties of the parties. The counter claim raised by the defendants was rejected holding that the defendants have not established that the plaintiff has encroached into any portion of the property of the defendants.

5. The defendants challenged the decision of the trial court in appeal. The appellate court set aside the decision of the trial court and remitted the suit for fresh disposal. The plaintiff is aggrieved by the decision of the appellate court and hence this appeal.

6. Heard the learned counsel for the appellant as also the learned counsel for the respondents.

7. A perusal of the decision of the trial court indicates that the Commissioner appointed in the suit has fixed the boundaries of the properties based on re-survey records. The appellate court found that the re-survey records have though become final, the same are not correct in so far as the properties of the plaintiff and the defendants are concerned. The aforesaid finding was rendered by the appellate court based on Ext.B4 letter addressed by the Superintendent of Survey, Anchal to the Registrar of this Court. Ext.B4 letter is seen addressed to the Registrar of this Court pursuant to the direction issued by this Court in WP(C).No.1547 of 2004. It is true that in Ext.B4, the Superintendent of Survey (Re-survey) has stated that there are some mistakes in the re-survey records. The learned counsel for the appellant contended that though there was a direction by this Court in WP(C).No.1547 of 2004 that the

boundaries of the properties shall be fixed after notice to the parties concerned, Ext.B4 letter was addressed by the re-survey authorities without affording him an opportunity for hearing. Be that as it may, the dispute in this case is as regards the boundaries of the property covered by Ext.A1 sale deed. The plaintiff is not claiming any right over any portion of the property obtained by the third defendant as per Ext.B1. Likewise, the defendants are also not claiming any right over the property obtained by the plaintiff from his mother through his sister. In a case like this, when the matter comes to the court, the boundary has to be fixed based on the title deeds of the parties and actual possession. Since the fixation of the boundary was made by the trial court based on the re-survey records, the appellate court cannot be faulted for having remitted the suit for fresh disposal.

In the said circumstances, the appeal is disposed of directing the trial court to fix the boundaries of the

properties based on the title deeds of the parties and actual possession, untrammelled by the observations and findings of the appellate court in the judgment impugned in this appeal.

Sd/-
P.B.SURESH KUMAR,
JUDGE.

Kvs/-

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PA TO JUDGE.