

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

TUESDAY, THE 23RD DAY OF JUNE 2015/2ND ASHADHA, 1937

Ex.FA.No. 40 of 2014

ORDER DATED 06-06-2014 IN EA.NO.264/2013 IN EP.NO.131/1995 IN OS 91/1989 OF SUB
COURT, KOTTARAKKARA

APPELLANT(S)/PETITIONER:

SREENIVASAN PILLAI, AGED 52,
S/O.PRABHAKARAN PILLAI, KARIMPIYIL VEEDU, VENDAR P.O.,
PUTHUR VILLAGE, KOTTARAKARA.

BY ADV. SRI.HARISH GOPINATH

RESPONDENT(S)/DECREE HOLDERS 2 TO 4 AND JUDGMENT DEBTORS 2 TO 7:

1. VILIASINI AMMA,
RESIDING AT DHANYA, PADINJATTINKARA,
KOTTARAKKARA - 691 001.
2. SANJAYAKUMAR,
RESIDING AT DHANYA, PADINJATTINKARA,
KOTTARAKKARA - 691 001.
3. USHAKUMARI,
RESIDING AT DHANYA, PADINJATTINKARA,
KOTTARAKKARA - 691 001.
4. JANAKI AMMA RAJAMMA,
SIVASAKTHI ENTERPRISES, JANARACKAL CHERRY, PERINADU,
KOLLAM - 691 001.
5. RAJAMMA GIRIJAKUMARI,
SIVASAKTHI ENTERPRISES, JANARACKAL CHERRY, PERINADU,
KOLLAM - 691 001.
6. RAJAMMA LATHIKA M. PILLAI,
SIVASAKTHI ENTERPRISES, JANARACKAL CHERRY, PERINADU,
KOLLAM - 691 001.

msv/

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7. KALA M.J.,
W/O.HARIKRISHNAKUMAR, KALA BHAVAN,
NEAR MALOOR COLLEGE,
PATTAZHI, PATHANAPURAM - 691 001.
8. KARTHIK KRISHNAN, AGED 13 YEARS
(MINOR), KALA BHAVAN, NEAR MALOOR COLLEGE
PATTAZHI, PATHANAPURAM, REPRESENTED BY HIS MOTHER
AND NATURAL GUARDIAN KALA M.J., KALA BHAVAN,
NEAR MALOOR COLLEGE, PATTAZHI,
PATHANAPURAM - 691 001.
9. KIRAN KRISHNAN, AGED 17 YEARS
(MINOR), KALA HAVAN, NEAR MALOOR COLLEGE,
PATTAZHI, PATHANAPURAM, REPRESENTED BY HIS MOTHER
AND NATURAL GUARDIAN KALA M.J., KALA BHAVAN,
NEAR MALOOR COLLEGE, PATTAZHI,
PATHANAPURAM - 691 001.

R1-R3 BY ADVS. SRI.T.K.MARTHANDAN UNNITHAN
SRI.V.JAYAKUMAR

THIS EXECUTION FIRST APPEAL HAVING BEEN FINALLY HEARD ON
23-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

msv/

P.B.SURESH KUMAR, J.

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Ex.F.A.No.40 of 2014.

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Dated this the 23rd day of June, 2015.

J U D G M E N T

An order passed in an application filed under Order 21 Rule 97 of the Code of Civil Procedure, hereinafter referred to as 'the Code' for short, is under challenge in this appeal.

2. The facts relevant for decision in this appeal are the following:

The predecessor of respondents 1 to 3 namely, Velayudhan Pillai instituted O.S.No.91 of 1989 before the Sub Court, Kottarakkara against the predecessor of respondents 4 to 9 for declaration of title and recovery of possession of the plaint schedule property therein. The suit was decreed on 14.2.1995 and the appeal preferred by the defendants challenging the decision of the trial court was dismissed by this Court on 3.11.2010. Thereafter,

respondents 1 to 3 filed a petition to execute the said decree. In the execution petition, the execution court ordered delivery of the property to be effected through the process of the court. Pursuant to the said order, when the Amin deputed from the court attempted to give delivery of the property, respondents 7 to 9 and the fifth respondent filed separate claim petitions setting up independent title to the plaint schedule property. The claim petition preferred by respondents 7 to 9 was dismissed by the execution court and the said decision was challenged by them before this Court in OP(C).No.2614 of 2013. Likewise, the claim petition preferred by the fifth respondent was dismissed by the execution court and the said decision was challenged before this Court in OP(C).No.3914 of 2013. OP(C).No.2614 of 2013 was dismissed on 13.8.2013. OP(C).No.3914 of 2013 was dismissed on 20.11.2013. Thereafter, the appellant filed E.A.No.264 of 2013 before the execution court, seeking among others, to declare that he is the

absolute owner in possession of the decree schedule property. The case set up by the appellant in E.A.No.264 of 2013 is that he is in exclusive possession of the decree schedule property from the year 1980 onwards and that he has perfected title over the decree schedule property by adverse possession and limitation. The application was opposed by the decree holders. The execution court, on an elaborate consideration of the materials on record, dismissed E.A.No.264 of 2013. The appellant is aggrieved by the said decision of the execution court and hence this appeal.

3. Heard the learned counsel for the appellant and also the learned counsel for respondents 1 to 3.

4. The learned counsel for the appellant contended that the appellant has specifically averred in the affidavit filed in support of E.A.No.264 of 2013 that he is in possession of the property from the year 1980 onwards and that the said averment has not been denied by respondents

1 to 3 in the counter affidavit filed to E.A.No.264 of 2013. According to the learned counsel for the appellant, in the said circumstances, the court below ought to have accepted the case of the appellant that he is in exclusive possession of the decree schedule property from the year 1980 onwards. It was contended by the learned counsel for the appellant that the impugned order was rendered without adverting to the said aspect of the matter.

5. Per contra, the learned counsel for respondents 1 to 3 contended that the appellant has not made out a case of possession at all and that the appellant being a person who claims title to the property based on adverse possession and limitation, he is not entitled to file an application in the nature of E.A.No.264 of 2013.

6. I have considered the rival contentions of the parties. As noticed above, the specific case of the appellant in E.A.No.264 of 2013 is that he has perfected title to the decree schedule property by adverse possession and

limitation. It is now settled that a person claiming title to a property by adverse possession and limitation cannot seek a declaration to the effect that such adverse possession has matured into ownership. The said proposition has been reiterated by the Apex Court recently in **Gurdwara Sahib v. Gram Panchayat Village Sirthala** [(2014)1 SCC 669].

Paragraph 8 of the said judgment reads thus:

"There cannot be any quarrel to this extent that the judgments of the courts below are correct and without any blemish. Even if the plaintiff is found to be in adverse possession, it cannot seek a declaration to the effect that such adverse possession has matured into ownership. Only if proceedings are filed against the appellant and the appellant is arrayed as defendant that it can use this adverse possession as a shield/defence."

That apart, a person who is raising a plea of adverse possession has to know first of all as to who is the true owner of the property, as otherwise, he may not be able to establish the *animus* to possess the property adverse to the interest of the real owner. As noticed by the trial court, the appellant has conceded in his evidence before the court

below that he is not aware as to the owner of the decree schedule property. Similarly, as rightly noticed by the court below, though on various occasions Advocate Commissioners appointed in the suit inspected the decree schedule property, none of them ever noticed the presence of the appellant in the property. As such, the conclusion arrived at by the execution court that the appellant has not established possession over the decree schedule property cannot also be held to be incorrect or illegal.

7. The learned counsel for the respondents, relying on the decision of the Apex Court in **Padmawati v. Harijan Sewak Sangh** [(2012) 6 SCC 460] contended that one of the reasons for overflowing the court dockets is frivolous litigations of this nature and therefore, exemplary costs shall be imposed on the appellants. In the course of the argument, it was conceded by the learned counsel for respondents 1 to 3 that the decree obtained by them has already been executed and the property has been delivered

to them. Though I am in respectful agreement with the proposition laid down by the Apex Court in the case referred to above, in so far as the decree has already been executed, I do not propose to impose any costs in this matter.

In the aforesaid facts and circumstances, the appeal is devoid of merits and the same is accordingly, dismissed. All the interlocutory applications in the appeal are closed.

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

Kvs/-

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PA TO JUDGE.