

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

TUESDAY, THE 14TH DAY OF JULY 2015/23RD ASHADHA, 1937

FAO.No. 371 of 2011 ()

AS 135/2005 of ADDL.DISTRICT COURT-I, MAVELIKKARA
OS 526/1997 of MUNSIFF COURT, KAYAMKULAM

APPELLANTS/RESPONDENTS 1 & 8/DEFENDANTS 1 & 8 IN O.S.526/97 :

1. K.N.THANKAMMA, AGED 72 YEARS,
VELIYIL VEEDU, CHIRAKKADAVOM MURI, KAYAMKULAM VILLAGE
2. SHONIMA, AGED 24 YEARS,
D/O. AJITH KUMAR, VELIYIL VEEDU, CHIRAKKADAVOM MURI
KAYAMKULAM

BY ADVS.SRI.C.P.RAVIKUMAR
SRI.P.B.SAHASRANAMAN
SRI.T.S.HARIKUMAR
SRI.S.MOHANAN

RESPONDENTS/APPELLANT & RESPONDENT NOS.3, 4, 5, 7 & 9/9TH RESPONDENT/PLAINTIFFS
1 & 2 :

1. YOUSAF KUNJU, S/O.USMANKUTTY,
ALUMMOOTIL, CHERAVALLY MURI, KAYAMKULAM.
2. ANILKUMAR, VELIYIL VEEDU,
CHIRAKKADAVOM MURI, KAYAMKULAM VILLAGE
3. * SANAL KUMAR, VELIYIL VEEDU
CHIRAKKADAVOM MURI, KAYAMKULAM VILLAGE (DELETED)

4. PRADEEP KUMAR VELIYIL VEEDU
CHIRAKKADAVOM MURI, KAYAMKULAM VILLAGE
5. RAJAMMA W/O. BHASKARAN, KALLIDATHAYIL,
THEVALLY MURI, KOLLAM
6. * R.KRISHNAN, S/O. RAMA SUBBYAR,
N.S.VINAYAKA NAGAR, WARD NO.53, PAPPANAM CODE VILLAGE
THIRUVANANTHAPURAM (DELETED)

(THE NAMES OF R3 & R6 ARE DELETED FROM THE PARTY ARRAY AT THE RISK
OF THE APPELLANTS VIDE ORDER DATED 9.6.2015 IN I.A.NO.598/15).

R1 BY ADV. SRI.C.S. MANILAL

R1 BY ADV. SRI.S. NIDHEESH

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON 14-07-
2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.B.SURESH KUMAR, J.

F.A.O. No.371 of 2011

Dated 14th July, 2015.

J U D G M E N T

The decision in A.S.No.135 of 2005 on the file of the District Court, Mavelikkara is impugned in this appeal. As per the impugned decision, the District Court set aside the decision in O.S.No.526 of 1997 on the file of the Munsiff Court, Kayamkulam and remitted the said suit for fresh disposal.

2. O.S.No.526 of 1997 is a suit for declaration of the title and possession of the plaintiffs over the plaint schedule property and for a mandatory injunction directing the defendants to remove the structures erected by them encroaching into the plaint schedule property and to restore the compound wall existed between the plaint schedule property and the properties of the defendants. The suit was dismissed by the trial court. The second plaintiff challenged the decision of the trial court in appeal. The appellate court remitted the suit for fresh disposal, holding that it is necessary to establish the identify of the plaint schedule property for the purpose of considering the contentions of the parties and that the identity

of the plaint schedule property has not been established by the plaintiffs. Defendants 1 and 8 are aggrieved by the said decision of the appellate court and hence this appeal.

3. Heard the learned counsel for the appellants as also the learned counsel for the first respondent.

4. The suit property is part of a large extent of 34 cents obtained by the first plaintiff. After purchasing the property, the first plaintiff erected a building in a portion of the property having an extent of 14 cents. According to the plaintiffs, the second plaintiff purchased from the first plaintiff a portion of the building as also the property lying vacant on its north, including the northern compound wall. The defendants are the owners of the property on the north of the northern compound wall of the 14 cents of the property referred to above. It is alleged by the plaintiffs that the defendants have demolished a portion of the compound wall separating their property and the property of the plaintiffs measuring 14 cents and erected some structures encroaching into a portion of the property owned by the plaintiffs which is lying in between the

building and the compound wall. It is the case of the plaintiffs that they are the owners in possession of the plaint schedule property and therefore, they are entitled to get a decree of mandatory injunction for the removal of the constructions made by the defendants encroaching into the plaint schedule property and for the restoration of the compound wall demolished by them.

5. The defendants contested the suit by filing a written statement. The essence of the contention of the defendants was that the second plaintiff has not obtained any right over the plaint schedule property which is lying in between the building and the compound wall and as such, he is not entitled to institute the suit. They also contended that they have not encroached into any portion of the plaint schedule property.

6. The trial court took the view that the plaintiffs have not established title and possession over the plaint schedule property and consequently, dismissed the suit. The appellate court, on a re-appraisal of the materials on record,

found that the plaint schedule property has not been correctly identified by the Advocate Commissioners appointed in the suit and that it is obligatory for the plaintiffs in a case like this to establish the identity of the plaint schedule property for the purpose of sustaining the reliefs claimed in the suit. Having taken the said view, instead of non-suiting the plaintiffs, the appellate court chose to remit the suit for fresh disposal with a direction that the trial court shall appoint the same Commissioner who prepared Exts.C1 and C2 report and plan with the assistance of the Taluk Surveyor for locating the suit property and also to find out the encroachment, if any, made by the defendants.

7. The learned counsel for the appellants contended that since the second plaintiff has no title to the plaint schedule property, the remand made by the appellate court was wholly unnecessary. According to him, the appellate court should have considered the question of title. In so far as it is found that the identity of the suit property has not been established by the plaintiffs, the question of considering the title of the plaintiffs

over the plaint schedule property does not arise. The question of the title has to be decided after identifying the property with reference to the documents of title. In that view of the matter, I do not find any merit in the contention raised by the learned counsel for the appellants.

8. The learned counsel for the first respondent contended that the structures erected by the defendants are structures violating the provisions in the Kerala Municipality Act and as such though steps have been initiated by the Municipality for removal of the same, proceedings are withheld due to the pendency of the suit. The question as to whether the structures, if any, erected by the defendants are structures erected in violation of the provisions of the Municipality Act and the Rules framed thereunder, is not the subject matter of this appeal. As such, the pendency of the suit shall not be an impediment for the statutory authorities to continue the proceedings, if any, initiated by them.

9. The appeal, in the circumstances, is devoid of any merits and the same is, accordingly, dismissed. It is, however,

made clear that the decision of the appellate court shall be understood only as a decision holding that the plaint schedule property has not been identified. As such, all the issues arising for consideration in the suit are to be decided afresh by the trial court untrammelled by the observations and findings rendered by the appellate court. The suit being one of the year 1997, I deem it appropriate to direct the trial court to dispose of the same as expeditiously as possible, at any rate, within a period of six months from today.

Sd/-

P.B.SURESH KUMAR, JUDGE.

tgs

(true copy)