

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

THURSDAY, THE 18TH DAY OF JUNE 2015/28TH JYAISHTA, 1937

FAO.No. 225 of 2010 ()

**AS 14/2006 of I ADDL.DISTRICT COURT, PALAKKAD
IN OS 126/1998 of ADDL.MUNSIFF COURT, PALAKKAD**

APPELLANT/RESPONDENT/DEFENDANT :

**PALAKKATTUSSERY SEVENA SAMAJAM,
AKATHETHARA, REPRESENTED BY ITS SECRETARY
AKATHETHARA VILLAGE & POST, AKATHETHARA AMSOM
PALAKKAD TALUK, PALAKKAD DISTRICT, PIN- 678 008.**

**BY ADVS.SRI.P.N.KRISHNANKUTTY ACHAN(SR.)
SRI.K.MOHANAKANNAN**

RESPONDENT/APPELLANT/PLAINTIFF :

**AKATHETHARA KHADI PRODUCERS' INDUSTRIAL,
CO-OPERATIVE SOCIETY LTD., NO.C IND P.68
REPRESENTED BY ITS PRESIDENT, AKATHETHARA VILLAGE,
& POST, AKATHETHARA AMSOM, PALAKKAD TALUK &
DISTRICT.**

**BY ADV. SRI.K.I.ABDUL RASHEED
BY ADV. SRI.K.A.SHAMSUDEEN
BY ADV. SRI.V.K.MEETHIANKUNJU
BY ADV. SRI.N.M.SIYAD**

**THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD
ON 18-06-2015, ALONG WITH FAO. 286/2010, THE COURT ON THE
SAME DAY DELIVERED THE FOLLOWING:**

bp

P.B.SURESH KUMAR, J.

F.A.O.Nos.225 & 286 of 2010

Dated this the 18th day of June, 2015

JUDGMENT

These appeals are preferred against the judgment in A.S No.14 of 2006 on the file of the District Court, Palakkad.

2. A.S No.14 of 2006 is an appeal preferred against the decree and judgment in O.S No.126 of 1998. The defendant in the suit is the appellant in F.A.O No.225 of 2010 and the plaintiff in the suit is the appellant in F.A.O No.286 of 2010.

3. The case of the plaintiff is that from out of the property obtained by the defendant as per Ext.X2 gift deed, they have purchased 46 cents as per Ext.X1 sale deed and they are in in possession and enjoyment of the same. Plaint A schedule property is the property covered by Ext.X1 sale deed. It is alleged in the plaint that the

defendant, who owns the property adjoining to the plaintiff A schedule property, has trespassed into a portion of the said property and erected some structures therein. The property allegedly trespassed upon by the defendant is shown in the plaintiff as B schedule. On the said allegations, the plaintiff has claimed a decree of mandatory injunction directing the defendant to remove the structures erected by them in plaintiff B schedule property. They have also claimed a decree for recovery of possession of plaintiff B schedule property.

4. The defendant contested the suit, contending inter alia, that though the extent of property obtained by them as per Ext.X2 gift deed was shown in the document as 76 cents, they have got possession only over 68.18 cents pursuant to Ext.X2 sale deed; that they are in possession of the remaining property covered by Ext.X2 gift deed namely 16 cents, leaving the property surrendered for widening the road abutting the property; that though they have transferred 46 cents out of the said property to the plaintiff; the plaintiff is not in possession

of 46 cents at present as they also had to surrender a portion of the property for widening the road abutting the property and that the attempt of the plaintiff in instituting the suit is to grab a portion of the property in the possession of the defendant.

5. The trial court dismissed the suit holding mainly that the plaint schedule properties have not been identified. The plaintiff has taken up the matter in appeal. The appellate court found that though two Commissioners were deputed by the trial court, the Commissioners appointed by the court have not correctly identified the property covered by Ext.X1 sale deed. As it was felt that it is not possible to ascertain whether any portion of plaint A schedule property is trespassed upon, without a proper measurement and demarcation of plaint A schedule property in accordance with the descriptions contained in the schedule to Ext.X1 deed, the suit was remitted to the trial court with a direction to identify and demarcate plaint A schedule property covered by Ext.X1 deed with the aid of a Surveyor.

6. The facts as stated above are not disputed either by the plaintiff or by the defendant. The fact that the plaint schedule properties have not been correctly identified and demarcated by the Advocate Commissioners appointed in the suit is not disputed.

In the circumstances, there is no illegality or impropriety in the judgment impugned in this appeal and the appeals are, accordingly, dismissed.

P.B.SURESH KUMAR, JUDGE.

smm