

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR**

**TUESDAY, THE 10TH DAY OF MARCH 2015/19TH PHALGUNA, 1936**

**FAO (RO).No. 293 of 2014**  
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**AS 33/2013 of SUB COURT, VADAKARA, DATED 16/7/2014**  
**OS 309/2011 of MUNSIF COURT, NADAPURAM, DATED 12/4/2013**  
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**APPELLANTS/RESPONDENTS/DEFENDANTS:**  
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- 1. KUNHABDULLA, AGED 53 YEARS,  
S/O AYISUMMA, AGRICULTURE, KUNNATH HOUSE  
PARAKKADAVU AMSOM DESOM, PO PARAKKADAVU  
VATAKARA TALUK, KOZHIKODE DISTRICT.**
- 2. KHADEEJA, AGED 47 YEARS  
W/O KUNHABDULLA, SWASTHAM, KUNNATH HOUSE  
PARAKKADAVU AMSOM DESOM, PO PARAKKADAVU  
VATAKARA TALUK, KOZHIKODE DISTRICT.  
(THE FIRST APPELLANT IS REPRESENTED BY 2ND APPELLANT  
WHO IS THE GUARDIAN APPOINTED BY THE COURT).**

**BY ADVS.SRI.T.KRISHNAN UNNI (SR.)  
SRI.VINOD RAVINDRANATH  
SRI.SAJU.S.A  
SMT.MEENA.A.  
SRI.K.C.KIRAN**

**RESPONDENT/APPELLANT/PLAINTIFF:**  
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**MOOSA, AGED 65 YEARS  
S/O. KUNHABDULLA, MERCHANT, KUNNATH HOUSE  
PARAKKADAVU AMSOM DESOM, PO PARAKKADAVU  
VATAKARA TALUK, KOZHIKODE DISTRICT, PIN - 673 509.**

**BY ADVS. SRI.B.KRISHNAN  
SRI.R.PARTHASARATHY**

**THIS FIRST APPEAL FROM ORDER - REMAND ORDER HAVING BEEN  
FINALLY HEARD ON 10-03-2015, THE COURT ON THE SAME DAY DELIVERED  
THE FOLLOWING:**

**P.B.SURESH KUMAR, J.**

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**F.A.O.(R.O.)No.293 OF 2014**  
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Dated this the 10<sup>th</sup> day of March, 2015

**JUDGMENT**

The decision of the Court of the Subordinate Judge, Vadakara in A.S.No.33 of 2013 by which the suit O.S.No.309 of 2011 on the file of the Court of the Munsiff, Nadapuram was remitted for fresh disposal, is under challenge in this appeal. The defendants in the suit are the appellants.

2. O.S.No.309 of 2011 is a suit for injunction. The plaint schedule property, measuring 9 cents in extent, was part of a larger extent of 10 cents owned by the first defendant. According to the plaintiff, the first defendant sold the said 10 cents of property to one Rajitha as per Ext.B1 Assignment Deed; that Rajitha in turn sold the said property to the brother of the second defendant Moosa as per Ext.A3 Assignment Deed and that the plaintiff has purchased the plaint schedule property from Moosa as per Ext.A1 Assignment deed. It is also his case that while Moosa was holding the property, he filed O.S.No.219 of 2009 before the Munsiff Court, Nadapuram seeking a decree of prohibitory injunction restraining the defendants from trespassing upon the 10

cents of property purchased by him as per Ext.A3 Assignment Deed; that a Commission was taken out in the said suit to identify the property; that the Commissioner found that the plaintiff therein was in possession only of the plaint schedule property and consequently, the plaintiff therein was granted a decree holding that the plaint schedule property is in the possession of the plaintiff therein. It is alleged that the defendants who are bound by the decree in O.S.No.219 of 2009 are attempting to trespass into the plaint schedule property.

3. The defendants filed a written statement contending mainly that the first defendant is mentally ill for the past 20 years and that Ext.B1 Assignment Deed is a false document created by the brother of the second defendant Moosa, who has executed Ext.A1 Assignment Deed in favour of the plaintiff. It was also contended by the defendants that Moosa managed to get the decree in O.S.No.219 of 2009 without serving summons on them.

4. The trial court dismissed the suit holding that the plaint schedule property has not been identified. The appellate court found that summons had been duly served on the defendants in O.S.No.219 of 2009 and the plaint schedule property has been identified in the said suit as per Ext.A10 plan. However, the appellate court remitted the suit for fresh disposal holding that the plaint schedule property has not been identified in the present suit. The appellate court also directed that the plaintiff shall be

permitted to apply for a Commission to demarcate and identify the plaint schedule property based on Ext.A10 plan. The defendants are aggrieved by the said decision of the appellate court.

5. Heard learned counsel for the appellants and the learned counsel for the respondent.

6. The learned counsel for the appellants contended that the direction issued by the appellate court permitting the plaintiff to identify the plaint schedule property on the basis of Ext.A10 plan is illegal and unsustainable as the said plan is one prepared in an earlier suit, on the basis of which a decree cannot be passed in the present suit. She has also contended that the finding rendered by the appellate court that the plaintiff is in possession of the plaint schedule property is unsustainable, for, the appellate court itself found that the plaint schedule property has not been identified in the suit.

7. As noticed above, the case of the plaintiff is that the plaint schedule property is the property covered by Ext.A10 plan in O.S.No.219 of 2009. The appellate court found that the plaintiff has not established the said case. It is in the said circumstance, the appellate court granted liberty to the plaintiff to identify the plaint schedule property on the basis of Ext.A10 plan. The appellate court has not directed the trial court to pass a decree in accordance with Ext.A10 plan. It had only directed the plaintiff

to establish the case set up by him. As such, there is nothing wrong in the direction issued by the appellate court to the permit the plaintiff to identify the plaint schedule property on the basis of Ext.A10 plan in O.S.No.219 of 2009. A reading of the appellate judgment as a whole indicates that the finding of the appellate court is that the defendants are bound by Ext.A11 decree passed in O.S.No.219 of 2009 and as such, they cannot be heard to contend that the plaintiff is not in possession of the property covered by Ext.A10 plan in O.S.No.219 of 2009. As noticed above, the case of the plaintiff is that the plaint schedule property is the property covered by Ext.A10 plan. It is in that context, the appellate court found that the plaint schedule property is in the possession of the plaintiff. There is, therefore, no illegality or impropriety in the decision of the appellate court. The appeal is devoid of merits and the same is accordingly dismissed.

**P.B.SURESH KUMAR, JUDGE**

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