

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOMAS P.JOSEPH

THURSDAY, THE 11TH DAY OF JULY 2013/20TH ASHADHA, 1935

FAO.NO. 303 OF 2010 ()

**A.S. NO.33 OF 2006, SUB COURT, THALASSERY
O.S. NO.207 OF 2002, MUNSIF-MAGISTRATE, THALASSERY**

APPELLANT(S)/APPELLANT/RESPONDENT/PLAINTIFF:

**K.REMA, AGED 45 YEARS,
W/O.VENUGOPALAN, VENUPURAM, KAVUMBHAGAM
TELLICHERRY.**

**BY ADVS.SRI.K.MOHANAKANNAN
SMT.A.R.PRAVITHA**

RESPONDENT(S)/APPELLANTS/DEFENDANTS:

- 1. SUNILKUMAR,S/O.GOVINDAN, AGED 45 YEARS,
ADARSH, BUSINESS, POST
KAVUMBHAGAM, TELLICHERRY.**
- 2. M.C.PAVITHRAN, S/O.GOPALAN NAMBIAR,
SREE PAVITHRAM, CO-OP BANK AUDITOR
RESIDING AT KAVUMBHAGAM, TELLICHERRY-10.**
- 3. P.P.SURESHBABU, S/O.SANKARAN,
AGED 32 YEARS, RAMESH DEEPTHI, KAVUMBHAGAM
TELLICHERRY**

**R,R1TO3 BY ADV. SRI.V.R.KESAVA KAIMAL
R,R1TO3 BY ADV. SRI.N.M.MADHU**

**THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD
ON 11-07-2013, ALONG WITH FAO. 304/2010, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:**

P.B.SURESH KUMAR, J.

F.A.O.Nos.303 & 304 of 2010

Dated this the 5th day of August, 2015

JUDGMENT

Two suits against common defendants were tried and disposed of by a common judgment. In appeal, the appellate court remitted the suits for fresh disposal. The plaintiffs in the suits are aggrieved by the decision of the appellate court.

2. O.S.Nos.206 & 207 of 2002 on the file of the Munsiff's Court, Thalassery, are the suits from which these appeals arise. Both the suits were suits for injunction. The case of the plaintiff in O.S.No.206 of 2002 is that he is the owner in possession of plaint A schedule property; that there exists a temple on the south of plaint A schedule property and that the defendants who are office bearers of

the committee of the temple are attempting to trespass into a portion of plaint A schedule property. A decree of permanent prohibitory injunction restraining the defendants from trespassing into plaint A schedule property was the relief sought in the suit. The defendants filed a written statement contending mainly that there is a dispute as to the southern boundary of the plaint A schedule property between the plaintiff on the one side and the temple authorities on the other side; that the Tahsildar had ordered fixation of the boundary between the properties; that pursuant to the order of the Tahsildar, the Taluk Surveyor had measured the properties and fixed the boundary of the properties on 15.7.2002 and that the suit is filed suppressing said fixation of boundary. The averment of the plaintiff that defendants are attempting to trespass into the property of the plaintiff has been denied by the defendants . The relevant portion of the written statement of the defendants reads thus:

"The averments in para 6 are false and hence denied.
These defendants have not trespassed into the plaintiff's

property on 16.7.2002. They have not tried to commit damages in the property and also they have not tried to change the nature of the plaintiff's property by uprooting and destroying trees and other plants. There was some boundary dispute between the plaintiff and the temple authorities and the Tahsildar had ordered fixation of boundary between the plaintiff's property and the temple property. On 15.7.2002 the town surveyor had fixed the boundary between the plaintiff's property and the temple property. There is already a lane along the boundary line fixed by the surveyor. The plaintiff has deliberately suppressed the said fact in the plaint. It is not correct to say that these defendants have put laterate stones towards east west for dividing the plaintiff's property into two. It is not correct to say that these defendants have threatened to convert the southern portion of the plaintiff's property into part of temple property."

The pleadings of the parties in O.S No.207 of 2002 were identical .

3. The trial court decreed the suits. In appeal, the appellate court found that the suit properties have been identified by the Advocate Commissioner as shown to him by the plaintiff and not with reference to the title deeds of the parties. Since it was found that the suit properties were not identified correctly by the Advocate Commissioner

appointed in the suit and since the disputes pertain to the boundaries of the properties, the appellate court found it fit to remit the suits for fresh disposal, after affording the plaintiffs an opportunity to identify their respective properties with the help of the Taluk Surveyor and with reference to their title deeds. In the light of the finding rendered by the appellate court that the suits were decreed without identifying the suit properties, the decision of the appellate court in remitting the suit for fresh disposal cannot be said to be faulty in any manner.

4. The learned counsel for the appellants contended that the defendants have no right to challenge the decision of the trial court in appeals as they do not have any interest in the property of the temple. The categorical pleading of the plaintiffs is that the defendants are the office bearers of the temple situated on the south of the suit properties and that they are trying to trespass into the suit properties in that capacity. In other words, the defendants were not sued by the plaintiff in their personal capacity. Since the defendants were sued by the plaintiffs in their capacity as the office

bearers of the temple referred to above, there is no merit in the contention raised by the learned counsel for the appellants.

In the result, the appeals are devoid of merits and the same are accordingly dismissed. The parties are directed to appear before the lower court on 15.10.2015.

P.B.SURESH KUMAR, JUDGE.

smm