

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

WEDNESDAY, THE 17TH DAY OF JUNE 2015/27TH JYAISHTA, 1937

SA.No.554 of 1995 (G)

AGAINST THE JUDGMENT IN AS 157/1987 of PRINCIPAL SUB COURT,NORTH
PARAVUR DATED 07-12-1993

OS 277/1980 of MUNSIFF COURT, PARUR

APPELLANTS (RESPONDENTS 1 AND 11) - DEFENDANTS 1 AND 14)

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1. KESARI BALAKRISHNA PILLAI MEMORIAL COLLEGE,
N. PARAVUR, REPRESENTED BY ITS PRESENT CHAIRMAN
M.K. SATHEESH VARMA, ADVOCATE, N. PARAVUR.
 2. M.K. SATHEESH VARMA, ADVOCATE, N.PARAVUR.

BY ADVS.SRI.S.VIDYASAGAR
SRI.DINESH R.SHENOY
SRI.T.K.VENUGOPALAN
SRI.B. JAYASANKAR

RESPONDENTS (APPELLANTS 2 TO 6 AND RESPONDENTS 2 TO 10 - 3RD
PLAINTIFF, LEGAL REPRESENTATIVES OF 2ND PLAINTIFF AND DEFENDANTS
2 TO 4, 6 AND 9 TO 13:

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1. P.G. VENUGOPAL, SON OF PARAMESWARAN NAIR,
RESIDING AT USHA GARDENS, PARAVUTHARA,
PARAVUR VILLAGE, N. PARAVUR TALUK, N. PARAVUR. (DIED.
LRs IMPEADED)
 2. M.K. SAROJINI AMMA, T.C.25/1100, SAROJ NIVAS,
THAMPANOOR, THIRUVANANTHAPURAM - 1.
 3. M.K. VIJAYALAKSHMI AMMA, VIJBAN B1, JAWAHAR NAGAR,
THIRUVANANTHAPURAM - 41.
 4. M.K. RAJESWARI AMMA, DEEPTHI, THAMPANOOR,
THIRUVANANTHAPURAM-1.
 5. LALITHA KURUP, KAUSTHUBHAM, KALADY, KARAMANA P.O.,
THIRUVANANTHAPURAM.
 6. V. RAMACHANDRA IYER, ADVOCATE, N. PARAVUR.
 7. S.P. NAIR, GOVINDA VILASAM, PARAVUR VILLAGE,
N. PARAVUR TALUK.

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8. K.S. RAJASEKHARA MENON, THARAMEL VEEDU, EZHIKKARA, NORTH PARAVUR TALUK.
 9. T.N. KRISHNAN NAIR, THAZHATHU VEEDU, PARAVUTHARA, PARAVUR VILLAGE, N. PARAVUR TALUK.
 10. P. PADMAKUMARI, C/O. T.R.C. NAIR, ENGINEER, OVERSEAS COMMUNICATION SERVICE, BEACONWINDEN STATION, DIGHUTI PUNE - 15.
 11. M.K. GOPALAKRISHNAN NAIR, 40 A, FLAT No.2, FLOOR No.2, ANUDH ROAD, KHIDKEE, PUNE - 411 003.
 12. M.K. VIJAYARAGHAVAN NAIR, 1-11-220/12, BRINDAVAN COLONY, BEGUNIPEL, HYDERABAD - 500016.
 13. P. LEELA DEVI, C/O. T.P. KRISHNAN NAIR, PULICKAL MELE-PUTHAN VEEDU, THAMPANOR, THIRUVANANTHAPURAM.
 14. P. SATHI DEVI, V/160, WEST OF MUNICIPAL TOWN HALL, N. PARAVUR.
- ADDL.R15 MINI, W/O. LATE P.G. VENUGOPAL, KARINITTATHU HOUSE, PULLUVAZHI, PERUMBAAVOOR.
- ADDL.R16 RADHABAI, 'USHA GARDENS', ST. GERMAN'S ROAD, NORTH PARAVUR.

(THE LEGAL REPRESENTATIVES OF DECEASED RESPONDENT No.1 ARE IMPEADED AS ADDL. RESPONDENTS 15 AND 16 AS PER ORDER DTD. 25.8.2000 IN CMP No.393/2000).

R2 & R3 BY ADV. SRI.C.T.JOSEPH
R2 & R3 BY ADV. SRI.K.R.GANESH
R3 BY ADV. SRI. N. SAJU THOMAS
R4 BY SRI.S.V.BALAKRISHNA IYER (SENIOR ADVOCATE)
R4 BY ADV. SRI.M.L.SAJEEVAN
R5 BY ADV. SRI.N.RAGHURAJ
R12 BY ADV. SRI.T.B.THANKAPPAN
R14 BY ADV. SRI.C.KOCHUNNY NAIR
R14 BY ADV. SRI.DALE P.KURIEN
R15 & R16 BY ADV. SRI.BAIJU JOHN
R15 & R16 BY ADV. SRI.JOHN VARGHESE(THOPPIL)
R15 & R16 BY ADV. SRI.V.B.PREMACHANDRAN
R15 & R16 BY ADV. SRI.K.N.CHANDRABABU

THIS SECOND APPEAL HAVING BEEN FINALLY HEARD ON 17-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.BHAVADASAN, J.

Second Appeal No.554 OF 1995

Dated this the 17th day of June, 2015.

J U D G M E N T

A strange suit with even a more strange decision by the lower appellate court has compelled the defendants 1 and 14 in O.S.No.277/1980 before the Munsiff Court, Parur to approach this Court for reliefs.

2. The suit was one for a declaration that the defendants have no right over the property and for other consequential reliefs. It is not in dispute that the property involved in the suit was the subject matter of partition in the family of the plaintiffs and the defendants as evidenced by O.S.No.434/1120 in which a preliminary decree and final decree have been passed. It is also not in dispute that plaint schedule property was not allotted to any sharers and it remained unoccupied. The claim of the plaintiffs is that the 24th defendant in O.S.No.434/1120 came to occupy the property and he claimed title by adverse possession and limitation and thereby now the successors in interest of that

defendant seek to prevent the defendants from interfering with the possession of the property.

3. The defendants resisted the suit. They pointed out that the plaintiffs had neither title nor possession to the suit property and it is admitted that it is item No.6 in Ext.A16 which was not allotted to anybody and therefore the plaintiffs could not lay claim to that property. They also pointed out that a declaration of the nature now sought for cannot be granted in law.

4. On the basis of the above pleadings, issues were raised and the parties went to trial. Evidence consists of the testimony of PWs 1 and 2 and the documents marked as Exts.A1 to A17. The defendants examined DW1 and had Ext.B1 marked.

5. The trial court, on appreciation of the evidence, came to the conclusion that the plaintiffs have miserably failed to establish their title and possession over the suit property and therefore declined to grant the relief. Dissatisfied with the decree of the trial court, the plaintiffs approached the lower appellate court. On the basis that since the defendants have not disputed the claim of the plaintiffs that they had a right by way of adverse

possession and limitation and since they did not file an additional written statement it is to be presumed that the plaintiffs are in possession, suit was decreed reversing the findings of the trial court.

6. Notice was issued on the following questions of law formulated in the memorandum of appeal:

- “1) Whether a suit for declaring that defendants have no right over an item of property, and not seeking any declaration that plaintiffs have any right over it, is maintainable in law?
- 2) Whether in the absence of any likelihood of obstruction to the enjoyment of the plaint schedule property, it is legal or proper to issue an injunction?
- 3) Whether the findings entered by the lower appellate court are perverse, being such as no reasonable court can enter on a consideration of the pleadings and evidence?”

7. Learned counsel appearing for the appellants contended that by no stretch of imagination, the decision of the lower appellate court is sustainable either on facts or in law. A negative declaration could not have been sought for especially in the light of the facts disclosed in this case. It is a strange case

where, according to the learned counsel, plaintiffs are unable to prove their title and nor they are able to establish their possession. The trial court, according to the learned counsel, correctly appreciated the facts and came to the conclusion that the plaintiffs were unable to prove any title to the property or their possession to the same and therefore dismissed the suit. The reason found out by the lower appellate court that since there was no refutation of the allegation of possession a decree has to follow cannot be sustained in law.

8. After having heard the learned counsel for the parties, it is felt that there is considerable force in the submission made by the learned counsel for the appellants. First of all, a suit claiming declaration based on adverse possession and limitation is not maintainable. Secondly, as rightly pointed out by the learned counsel for the appellants, it is a negative relief that is being sought for. Even assuming it may be possible to do so, necessarily the plaintiffs will have to show their title and possession to establish their claim. Admittedly, the property in question is item No.6 in Ext.A16 which is not even, as per the

pleadings in the plaint, allotted to any of the sharers. The 24th defendant in the suit claims to have simply occupied the property and claims that he has been in possession of the same. Even strange is the fact that the lower appellate court chose to believe the same. The trial court has rightly concluded that without any evidence of title or possession, no relief can be granted to the plaintiffs. That seems to be a right decision. Nowhere in the plaint the plaintiffs claimed that they are owners of the property by virtue of any document or that they have come into possession in accordance with law. As already noticed, suit based on adverse possession and limitation is not maintainable.

9. Apart from the above fact, it is significant to notice that the 2nd plaintiff was originally a defendant in the suit and later on he transposed as 2nd plaintiff and then he came up with a claim of adverse possession and limitation. It is a comedy of errors.

10. After having heard the learned counsel appearing for the parties and also after having perused the records and the judgments of the courts below, this Court is satisfied that the decree passed by the lower appellate court cannot be sustained

in law for more than one reason which have already been mentioned.

This appeal is allowed. The judgment and decree of the lower appellate court are set aside and that of the trial court is restored.

Sd/-

**P.BHAVADASAN
JUDGE**

smp

// True Copy //

P.A to Judge.