

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

WEDNESDAY, THE 21ST DAY OF JANUARY 2015/1ST MAGHA, 1936

RSA.No. 1329 of 2004 ()

**AGAINST THE JUDGMENT IN AS 208/2003 OF II ADDITIONAL DISTRICT COURT,
ERNAKULAM DATED 30.09.2004**

**AGAINST THE JUDGMENT IN OS 1689/2001 OF FIRST ADDITIONAL MUNSIFF COURT,
ERNAKULAM DATED 31.5.2003**

APPELLANTS/APPELLANTS/PLAINTIFFS:

- 1. DR.A.J.ANTONY,
S/O.JOHN, RESIDING IN FLAT NO.G3, ROCKS GARDEN
ELAMKULAM.**
- 2. DR.V.M.MONICA, W/O.A.J.ANTONY,
RESIDING AT FLAT NO. G3, ROCKS GARDEN, ELAMKULAM.**

**BY ADVS.SRI.V.V.ASOKAN
SMT.S.AMINA**

RESPONDENT/RESPONDENT/DEFENDANT:

**JOSE JOSEPH, S/O.P.K.JOSEPH,
FLAT NO.6, ROCKS GARDEN, FATHIMA CHURCH ROAD
KADAVANTHRA, KOCHI-20.**

**BY ADVS. SRI.JACOB CHACKO
SRI.MATHEWS JOSEPH**

**THIS REGULAR SECOND APPEAL HAVING BEEN FINALLY HEARD ON
21-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

Shg/

P.B.SURESH KUMAR, J.

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R.S.A.No.1329 of 2004

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Dated this the 21st day of January, 2015

JUDGMENT

The plaintiffs in O.S.No.1689 of 2001 on the file of the Court of the I Additional Munsiff, Ernakulam have come up in this second appeal challenging the decision in that suit as also the decision of the appellate court confirming the same.

2. O.S.No.1689 of 2001 was a suit for prohibitory injunction restraining the defendant from interfering with the possession and enjoyment of the plaintiffs over plaint B schedule car porch and for other ancillary reliefs. The case of the plaintiffs is that on 17.8.2001, they purchased plaint A schedule apartment as per Ext.A1 assignment deed and they are in possession and enjoyment of the apartment as also plaint B schedule car porch attached to the same. According to the plaintiffs, on 18.9.2001, the defendant who has no right over plaint B schedule car porch has kept his scooter in the said car porch with a view to stake a claim over the said car porch.

3. The defendant filed a written statement contending *inter alia* that plaint B schedule is the car porch owned by his father who was the original owner of the property.

4. At the time of the institution of the suit, the plaintiffs have taken out a commission. Ext.C2 is the report of the Commissioner.

In Ext.C2, it is stated by the Commissioner that the car of the plaintiffs was found in plaint B schedule car porch at the time of inspection. In the course of the proceedings, the same Commissioner inspected the plaint schedule property again and submitted Ext.C1 report. In Ext.C1 report, it is stated that at the time of the second inspection, plaint B schedule car porch was seen numbered as B.

5. The trial court though found that there is no dispute between the parties as to the identity of plaint B schedule car porch, dismissed the suit holding that there is no evidence to show that the plaintiffs have been using the said car porch. The plaintiffs challenged the decision of the trial court in appeal. The appellate court found that plaint B schedule car porch is the car porch described in the title deed of the plaintiffs, but nevertheless confirmed the decision of the trial court holding that the plaintiffs have failed to prove their possession over the said car porch.

6. The following are the substantial questions law formulated for decision in this appeal:

“(i) Have the courts below acted in accordance with law in the matter of appreciating the pleadings and evidence on record?

(ii) Are the findings of the courts below sustainable in law?"

7. It is beyond dispute that there are only two car porches available in the structure of the building of which one is plaint B schedule car porch and the other is the car porch allotted to the defendant as per Ext.B1. The appellate court found that Plaint B schedule is the car porch covered by the title deed of the plaintiffs. The relevant finding of the appellate court reads thus:

"The appellant severely criticised the finding of the learned Munsiff stating that the learned Munsiff exceeds his limit by introducing him own explanation without the pleading by the defendant. The appellants mainly thrust on the point that in Ext.A3, C schedule is the parking bay. The word "bay" means chamber or case in a building between two panel beams of the building. B schedule is a bay which is in between two panel beams of the building. This fact conclusively prove that B schedule property claimed by the plaintiff is the C schedule in Exts.A1 and A3."

8. The defendant does not claim title over the plaint B schedule car porch. As such, when it was found that plaint B schedule property is the car porch purchased by the plaintiffs, in the absence of any contra evidence, it has to be presumed that the

plaintiffs are in possession of the property. The findings of the courts that the plaintiffs have not established possession over plaint B schedule car porch, in the circumstances, are unsustainable in law and the question No.2 formulated for decision is answered accordingly.

In the result, the second appeal is allowed, the decrees and judgments of the courts below are set aside and the plaintiffs are granted a decree of permanent prohibitory injunction restraining the defendant and his men from disturbing or interfering with the possession and enjoyment of the plaintiffs over plaint B schedule car porch. There will be no orders to costs.

Sd/-

**P.B.SURESH KUMAR
JUDGE**

/true copy/

P.A. to Judge

vpv