

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT.

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

FRIDAY, THE 10TH DAY OF JULY 2015/19TH ASHADHA, 1937

RP.No. 634 of 2005 () IN AS.502/1993

AS 502/1993 of HIGH COURT OF KERALA DATED 18-01-2005
OS 1014/1986 of II ADDL.SUB COURT,THRISSUR

REVIEW PETITIONERS/APPELLANTS:

1. P.L.PHILIP, S/O.PANDHIKKOTTIL LOOKKA,
ILANHI VILLAGE, MOOVATTUPUZHA TALUK
ERNAKULAM DISTRICT, BY POWER OF ATTORNEY HOLDER
P.L.LOOKKOS, S/O.AVARAMAKKARAYIL PANDHIKOTTIL, LOOKKA
MULAKKULAM VILLAGE, VIAKOM TALUK.
2. P.L.LOOKKOS,
S/O.AVARAMALLARAYIL PANDHIKOTTIL LOOKKA
MULAKKULAM VILLAGE, VAIKOM TALUK, KOTTAYAM DISTRICT.
3. SAIMON PHILIP,
S/O.THENGUMTHOTTATHIL T.P.SAIMON
VADASSERIKKARA VILLAGE, PATHANAMTHITTA TALUK
REPRESENTED BY POWER OF ATTORNEY HOLDER, P.L.LOOKKOS.
4. ANIE PHILIP, D/O.C.EAPPAN,
VALAKKUZHI HOUSE, FACTORY WARD, AMBALAPPUZHA TALUK
ALAPPUZHA TOWN
REPRESENTED BY POWER OF ATTORNEY HOLDER
P.L.LOOKKOS.
5. SYRIAC SEBASTIAN,
S/O.KOLATH, PUTHANPURAYIL K.C.SEBASTIAN
KAINIKARA VILLAGE, KUTTANAD TALUK.

BY ADVS. SRI.K.MOHANA KANNAN

RESPONDENT(S)/RESPONDENTS:

1. V.V.AUGUSTINE
S/O.VALAVNAL THURUTHEL VARKEY, EDAPPALLY
ERNAKULAM DISTRICT.
2. ELIZABETH (MINOR), D/O.V.V.AUGUSTINE,
RESIDING AT EDAPPALLY, ERNAKULAM DISTRICT
REPRESENTED BY HER FATHER, 1ST RESPONDENT.
3. MARIYAKUTTY,
D/O.AMANAKKARAKARAYIL KARAKKAKUNNEL VARGHESE
RAMAPURAM VILLAGE, MEENACHIL TALUK.
4. VARKEY, S/O.VARGHESE(DIED),
RAMAPURAM VILLAGE, MEENACHIL TALUK.
5. THOMAS, S/O.VARGHESE,
RAMAPURAM VILLAGE, MEENACHIL TALUK.
6. ANNAMMA, W/O.VARGHESE,
RAMAPURAM VILLAGE, MEENACHIL TALUK.
7. VARKEY, S/O.VARGHESE,
RESIDING AT VALAVNALTHURUTHEL, RAMAPURAM VILLAGE
MEENACHIL TALUK.
8. MERIYAMMA, W/O.AUGUSTHI, RESIDING AT
VALAVANALTHURUTHEL, AMNAKARA, RAMAPURAM VILLAGE
MEENACHIL TALUK.
9. MRS.BEENA THOMAS VALLOOKKODU,
W/O.THOMAS, RESIDING AT HOUSE NO.243
PUTHUPALLIPARAMKARA, THRIKKAKARA VADAKKU VILLAGE
KANAYANNUR TALUK, ERNAKULAM DISTRICT.
10. SMT. EALY, W/O.VARKEY,
VALAVANATHURUTHEL, AMANAKKARA, RAMAPURAM
PALAI, KOTTAYAM DISTRICT,

RP.No. 634 of 2005 () IN AS.502/1993

R1 TO R5 BY ADV. SRI.THOMAS ANTONY KALLANPALLY

BY ADV. SRI.P.P.JNANASEKHARAN

BY ADV. SRI.K.M.JAMALUDHEEN

R6, R8 & R9 BY SRI.S.V.BALAKRISHNA IYER, SENIOR ADVOCATE.

BY ADV. SRI.R.VIJAYAGOPAL

BY SRI.K.JAYAKUMAR, SENIOR ADVOCATE

THIS REVIEW PETITION HAVING BEEN FINALLY HEARD ON 10-07-2015, THE
COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.B.SURESH KUMAR, J.

R.P. No.634 of 2005

in

A.S.No.502 of 1993

Dated 10th July, 2015.

O R D E R

A.S.Nos.232 of 1992, 242 of 1992 and 502 of 1993 were preferred against the decree and judgment in O.S.No.1014 of 1986 on the file of the Sub Court, Thrissur. Among the said appeals, A.S.No.232 of 1992 is filed by defendant Nos.6, 8 and 9, A.S.No.242 of 1992 is filed by defendant Nos.1 to 5 and A.S.No.502 of 1993 is filed by the plaintiffs.

2. The suit O.S.No.1014 of 1986 was one for recovery of possession of an item of property, measuring 6.30 acres, and for fixation of the southern boundary of the properties purchased by the plaintiff as per Exts.A2 to A6 sale deeds. The suit was decreed by the trial court. The appeals filed by the defendants were challenging the decree granted by the trial court in favour of the plaintiffs and the appeal of the plaintiffs was against the decision of the trial court in declining

the mesne profits claimed by them. This Court set aside the decision of the trial court and remitted the suit for fresh disposal. The Review Petition is filed by the plaintiffs aggrieved by the said decision of this Court.

3. The plaintiffs in the suit acquired 25 acres of property as per Exts.A2 to A6 sale deeds. According to them, the plaint schedule property though covered by the sale deeds of the plaintiffs, the same is in the possession of the defendants. As noticed above, the trial court granted a decree to the plaintiffs as prayed for by them. In the appeals referred to above, after hearing the learned counsel for all the parties and after perusing the evidence on record, this Court came to the conclusion that the properties covered by Exts.A2 to A6 documents have not been identified by the trial court while granting the decree sought for by the plaintiffs. It was also found by this Court that in so far as the case set up by the plaintiffs is that the plaint schedule property constitutes the property found short in extent, it was obligatory for the plaintiffs to establish the identity of the property covered by their sale deeds. It is on that basis, this Court set aside the

decision of the trial court and remitted the suit for fresh disposal.

4. Heard the learned counsel for the review petitioners as also the learned Senior Counsel appearing for respondent Nos.6, 8 and 9.

5. The learned counsel for the review petitioners contended that in the course of the trial, the court below deputed three different Advocate Commissioners, who have filed five reports. Exts.C1 to C5 are the reports of the Advocate Commissioners appointed by the court. According to the learned counsel, among the said reports, Ext.C4 indicates that the properties obtained by the plaintiffs as per Exts.A2 to A6 sale deeds have been identified and the judgment sought to be reviewed is rendered without referring to the said report of the Advocate Commissioner.

6. A perusal of the judgment sought to be reviewed indicates that the fact that there are five reports submitted by the Advocate Commissioners appointed in the suit, has been taken note of by the learned Judge. There is no reference to the contents of the said reports in the judgment. A

copy of Ext.C4 report which was made available to me at the time of hearing indicates that the Advocate Commissioner who submitted the said report has not identified the plaint schedule property with reference to the sale deeds obtained by the plaintiffs. The aforesaid fact was also taken note of by the trial court in the matter of deciding the suits in favour of the plaintiffs. While considering the issue as to the claim for mesne profits raised by the plaintiffs, it was categorically found by the court below that none of the Advocate Commissioners were able to identify the property which is in the exact possession of the plaintiffs and other defendants. The remand made by this Court, in the circumstances, is for the benefit of the plaintiffs as well. There is, therefore, no merit in the review petition and the same is accordingly dismissed. The parties shall appear before the court below on 2.9.2015.

Sd/-

P.B.SURESH KUMAR, JUDGE.

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(true copy)