

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

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

R.S.A.No. 431 of 2005

AGAINST THE JUDGMENT IN AS 27/2003 of ADDL.SUB COURT,
KOCHI.

AGAINST THE JUDGMENT IN OS 284/2002 of PRINCIPAL
MUNSIFF COURT, KOCHI.

APPELLANT(S)/APPELLANT/PLAINTIFFS:

SASIDHARAN, S/O. AYYAPPAN,
AGED 55 YEARS, RESIDING AT NARANATTU HOUSE,
NAYARAMBALAM VILLAGE, KOCHI TALUK.

BY ADVS.SRI.T.H.ABDUL AZEEZ
SRI.K.P.MAJEED
SRI.T.B.HOOD

RESPONDENT(S)/RESPONDENTS/DEFENDANTS:

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1. SANKUNNI, S/O. GOVINDAN,
AGED 52 YEARS, MANGALATH HOUSE,
NAYARAMBALAM VILLAGE,
KOCHI TALUK.
 2. SAJEEVAN, S/O. SANKUNNI,
AGED 26 YEARS, MANGALATH HOUSE,
NAYARAMBALAM VILLAGE,
KOCHI TALUK.
 3. JEEYESH, S/O. GOPI, AGED 24 YEARS,
NARANATTU HOUSE, NAYARAMBALAM VILLAGE,
KOCHI TALUK.
 4. RAVEENDRAN S/O. REGHAVAN, AGED 36 YEARS,
PALLIPARAMBU HOUSE, NAYARAMBALAM VILLAGE,
KOCHI TALUK.
 5. NAYARAMBALAM GRAMA PANCHAYATH,
REPRESENTED BY ITS SECRETARY, NAYARAMBALAM P.O.,
KOCHI TALUK.

R1 TO R4 BY ADV. SMT.T.B.MINI
R5 BY ADV. SRI.C.A.CHACKO

THIS REGULAR SECOND APPEAL HAVING BEEN FINALLY
HEARD ON 10-07-2015, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

P. BHAVADASAN, J.

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R.S.A. No. 431 of 2005
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Dated this the 10th day of July, 2015.

JUDGMENT

Undaunted by the concurrent findings against him, the plaintiff in O.S. 284 of 2002 on the file of the Principal Munsiff's Court, Kochi has come up before this Court in Second Appeal.

2. The plaintiff claimed to be the owner in possession of 9.183 cents of land with a residential building therein comprised in Sy. No. 150/4 of Nayarambalam Village which he claimed to have been obtained as per Ext.A1 dated 19.11.1992. The allegation is that the property had well defined boundaries and had been lying well demarcated from the rest of the properties. It is alleged in the complaint that permission was obtained from the Panchayat to put up a boundary wall in the year 1996 and though a portion of the boundary wall was put up, the balance construction had to be given up for paucity of funds. It was

alleged that in between the property of the defendants and the Panchayat road on the east, there is a narrow strip of land and therefore, the plaintiff had no direct access to the Panchayat road. Alleging that in the light of the said fact, sanction of the Panchayat is not required for putting up the construction and claiming that the plaintiff had every right to protect his property, the suit was laid seeking a declaration that Ext.A7, a resolution passed by the Panchayat, is void and had no legal effect.

3. The fifth defendant Panchayat resisted the suit. Their main contention was want of notice under Section 249 of the Panchayat Raj Act among various other contentions. It is also pointed out that the period of licence granted in 1996 had expired in 1999 and that could not be used for further construction. They also disputed the claim of the plaintiff that there was a narrow strip of land between the property of the plaintiff and

Panchayat road on the east and therefore, it is not necessary to seek permission of the Panchayat.

4. On the above pleadings, issues were raised and parties went to trial. The evidence consists of the testimony of P.Ws. 1 to 3 and documents marked as Exts.A1 to A8 from the side of the plaintiff. The defendants did not adduce any evidence. Exts.C1 and C1(a) are the commission report and sketch. Ext.X1 is the third party exhibit.

5. The trial court, on a consideration of the materials before it, found that there was no notice as contemplated under Section 249 of the Panchayat Raj Act and that the suit is not maintainable. It is also found that the notice issued to the plaintiff is valid and binding. Accordingly, the suit was dismissed.

6. The plaintiff carried the matter in appeal as A.S. 27 of 2003. The appellate court found that there was no evidence of any narrow

strip of land in between the property of the plaintiff and the Panchayat road on the east and found that though the pathway is claimed as private property, it is used by the public and it is a public pathway as contemplated under Section 2 sub-clause (35) of the Panchayat Raj Act. The court below formed the opinion that permission and sanction of the Panchayat is necessary to put up the construction. It concurred with the trial court regarding the finding that the suit was bad for want of notice. The appeal was also dismissed.

7. Notice was issued on the following questions of the law:

- i) Whether plan and licence is required for constructing a compound wall in a property which is not abutting to Panchayat road or any public road?
- ii) Whether Kerala Building Rules was applicable in Grama Panchayat in 1996?
- iii) Are the documents Exts.C1, C1(a) and X1 sufficient to hold the issues involved in the case in favour of the appellant?

iv) Whether Ext.A8 can be treated as notice under Section 249 of the Panchayat Raj Act?"

8. Learned counsel appearing for the appellant contended that the courts below have erred both on facts and in law and had gone wrong in holding that the plaintiff is not entitled to any relief. The various contentions raised by the plaintiff have not been considered and therefore, the judgments and decrees of the courts below are liable to be set aside.

9. Learned counsel for the respondents on the other hand contended that the claim of the plaintiff now, that no permission is required cannot be countenanced on the ground that in 1996 he had applied and obtained permission. That was expired in 1999. It was thereafter construction was attempted. Learned counsel also pointed out that Ext.A8 can never be treated as a notice under Section 249 of the Panchayat Raj Act and therefore, the suit is not maintainable. The courts below

were right in dismissing the suit.

10. It was very vehemently argued that notice issued by the Panchayat is without authority. This Court finds that no notice directing the plaintiff to demolish the compound wall has been produced before the courts below, even though the courts below extensively referred to that aspect.

11. The reliefs in the plaint read as follows:

"A) Declare the order dated 3.12.2001 of Nayarambalam Grama Panchayat against the plaintiff to demolish the existing compound wall in the plaint schedule property to be void and null and not binding upon the plaintiff.

B) To pass a permanent prohibitory order of injunction restraining the defendants and their men and agents from trespassing into the plaint schedule properties and committing any mischief and waste or causing obstructions to the construction of the compound wall in the plaint schedule properties."

12. The order made mention of in the plaint is not seen produced. The document made mention of in the relief sought for in the plaint must be with reference to Ext.A7. That is a decision taken by the Panchayat to authorize the Secretary to take such steps as are necessary to pull down the construction made by the plaintiff.

13. It is therefore almost clear that no notice has been issued to the plaintiff. One fails to understand as to how the plaintiff was competent to challenge the authorization given to the Secretary to take steps. On that sole ground, the suit is not maintainable.

14. If all the plaintiff was aggrieved by any decision, even assuming it be so, there are statutory remedies available to him against the decision taken by the Panchayat. Having not pursued any such remedy, the plaintiff cannot be heard to say that this Court should exercise its discretion. As has rightly been found by the

courts below, there is want of notice under Section 249 of the Panchayat Raj Act.

For the above reasons, this Court finds no reason to interfere with the findings of the courts below. This appeal is dismissed. However, it is made clear that none of the observations made by the trial court, the lower appellate court or this Court will not stand in the way of the plaintiff resorting to appropriate remedies. In case any statutory remedy is available to him, the period spent for this litigation shall be taken into consideration for exclusion.

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P. BHAVADASAN,
JUDGE