

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

MONDAY, THE 25TH DAY OF MAY 2015/4TH JYASHTA, 1937

RSA.No. 69 of 2006 ()

**AGAINST THE JUDGMENT IN AS. NO.55/2004 OF ADDITIONAL DISTRICT COURT,
SPECIAL COURT FOR NDPS CASES, THODUPUZHA DATED 16-08-2005.**
**AGAINST THE JUDGMENT IN OS. NO.388/1998 OF MUNSIF COURT,
THODUPUZHA DATED 29-11-2000.**

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SECOND APPELLANTS/APPELLANTS/PLAINTIFFS:

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- 1. JOHNSON, S/O.BABY, AGED 33 YEARS,
KULAKKATTU HOUSE, ODIYAPARA KARA,
VANNAPPURAM VILLAGE.**
 - 2. MARIYAKUTTY, W/O. LATE CHACKO,
HOUSE WIFE, AGED 63 YEARS, KULAKATTU HOUSE,
ODIYAPARA KARA, VANNAPPURAM VILLAGE.**
 - 3. ESTHER @ AMMINIKUTTY, D/O. LATE CHACKO,
HOUSE WIFE, AGED 30 YEARS, KULAKKATTU HOUSE,
ODIYAPARA KARA, VANNAPPURAM VILLAGE.**

BY ADV. SRI.S.SREEKUMAR.

RESPONDENTS/RESPONDENTS/DEFENDANTS:

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- 1. DANIEL, S/O.DANIEL, AGED 72 YEARS, VAZHAMATTATHIL,
KULAKKATTU HOUSE, MULLANKUTHY KARA,
VANNAPPURAM VILLAGE.**
 - 2. JOHN, S/O. DANIEL, AGED 70 YEARS,
KULAKATTU HOUSE, KOOVAPPALLY KARA,
KUDAYATHOOR VILLAGE.**

BY ADV. SRI.UNNIKRISHNAN.V.ALAPATT.

**THIS REGULAR SECOND APPEAL HAVING BEEN FINALLY HEARD
ON 27/03/2015, ALONG WITH RSA. NO.102 OF 2006, THE COURT
ON 25/05/2015 DELIVERED THE FOLLOWING:**

rs.

A.V.RAMAKRISHNA PILLAI, J

RSA Nos.69 & 102 of 2006

Dated this the 25th day of May, 2015

JUDGMENT

RSA No.69/2006 arises out of A.S.No.55/2004 on the files of the District Court, Thodupuzha which in turn arises out of O.S.No.388/1998 of the Munsiff's Court, Thodupuzha filed by the appellants. In the suit, the plaintiffs prayed for a decree of permanent prohibitory injunction restraining the defendants and their men from trespassing upon the plaint schedule property and reducing any portion of it into their possession or from causing any obstruction or nuisance to the peaceful possession and enjoyment of the plaint schedule property by the plaintiff.

2. RSA No.102/2006 arises out of decree and judgment in A.S.No.148/2004 of the same District Court which in turn arises out of O.S.No.68/1999 of the same Munsiff's Court filed by respondents 1 and 2 for partition and separate possession of the same properties. The

plaintiffs in O.S.No.68/1999 were the defendants in O.S.No.388/1998.

3. In O.S.No.388/1998, there were three plaintiffs. The first plaintiff is the husband of the third plaintiff. The second plaintiff is the mother of the third plaintiff. Late Chacko, the husband of the second plaintiff have two brothers. They are the defendants. In the plaint, the plaintiffs allege that Chacko died on 20.8.1998 leaving the second and third plaintiff as his legal heirs. Though he was physically fit and hard working, he was not efficient in managing the family affairs. Daniel, the father of Chacko died in 1991. Mariam, the mother of Chacko died in March 1998. Chacko was the eldest son of Daniel. Daniel had a vast area of forest land in his possession where he had raised valuable improvements. Encroached forest lands were later evicted by the Government by giving at least three acres of cleared revenue lands. Accordingly, Chacko was allotted three acres of property on Odiyapara Kara in Vannappuram Village. Near to the said plot about 1 acre of rocky area was left as tharisu which also forms part of

allotted plot of late Chacko. Later, Chacko was given patta by the Government in the year 1974. However, the original of the same was lost. The aforesaid three acres and the excess land is detailed in the plaint schedule. It is further alleged that Daniel, the young brother of Chacko, who is the first defendant, was allotted three acres of land in Mullankuthy Kara in Vannappuram Village wherein he is residing. John, the youngest brother of Chacko was given the entire tharavad property at Koovappally. He sold a small portion of it and purchased 5 acres of property near Adimaly. Their sister Annakutty was also allotted with three acres of property from the Government at Ranny. The third plaintiff who was the only daughter of late Chacko got married with the first plaintiff in 1996 and they are residing with the third plaintiff in the plaint schedule property managing the entire affairs of the family. The defendants have not advanced any right of claim at any time over the plaint schedule property. However, they were given to understand that the defendants are making hasty preparations for trespassing into the plaint schedule

property and to construct a shed therein to reside. Thus, the suit.

4. In the written statement, the defendants contended that the patta of the property was issued in the year 1974 in the name of Daniel Chacko, the father of late Chacko and defendants. Daniel Chacko died intestate on 2.4.1992 and thereafter intestate succession operate and accordingly, the defendants, late Chacko, the father of the third plaintiff and sister Annakutty became the co-owners of the property. It is also alleged that on the death of Chacko, his share devolved upon the second and third plaintiffs and thus they became the co-owners of the plaint schedule property. It was further contended that after the death of Daniel, the defendants along with second and third plaintiffs and Annakutty were jointly possessing and enjoying the property.

5. The same defendants filed O.S.No.68/1999 for partition of the plaint schedule property and for a permanent prohibitory injunction restraining the defendants who are the plaintiffs in the first suit from

alienating or inducting third parties in the plaint schedule property and from causing any mischief in the plaint schedule property. They alleged that the second and third plaintiffs in the first suit are entitled to possess the share of the property which late Chacko inherited. In that suit, the defendants filed a written statement asserting their contentions raised in the plaint in the previous suit.

6. Both the suits were tried by the trial court separately. O.S.No.388/1998 was dismissed with cost. O.S.No.68/1999 was decreed finding that the plaintiffs are entitled for partition and separate portion of 1/4th share each of the plaint schedule property. It was also held that the third defendant also is entitled for partition and separate portion of 1/4th share and defendants 1 and 2 together are entitled for separate portion of 1/4th share.

7. Aggrieved by this judgment, the appellants filed separate appeals which were heard and disposed of by a common judgment which are impugned in these appeals.

8. I have heard Mr.S.Sreekumar, the learned counsel for the appellants and Mr.Unnikrishnan, the learned

counsel for the respondents.

9. From the genealogy submitted by the learned senior counsel for the appellant at the time of hearing, it can be seen that the parties are the lineal descendants of one Chacko. He had a son by name Daniel. According to the appellants, he was known as Daniel Chacko. The said Daniel Chacko had four children by name, Chacko Daniel, John and Annamma. Chacko, (son of Daniel Chacko) died. His wife is Mariamma alias Marykutty and his daughter is Esther. The first suit was instituted by Marykutty and Esther along with Johnson, who is the husband of Marykutty. Daniel and John are the defendants in the suit. The second suit was instituted by Daniel and John (son of Daniel Chacko) making Marykutty, Esther and Annamma as defendants. In the second suit, the plaintiffs claimed title to the property on the basis of Ext.A1 which is a patta issued in the name of one Daniel Chacko, Kulakattu, Kaliyar. The plaintiffs alleged that the said patta is in the name of her father. However, the contesting defendants (Marykutty and Esther) contended that Daniel Chacko

made mention of in Ext.A1 is the husband of the first defendant. According to them, the first name Daniel is his father's name. However, the plaintiffs on the strength of an identity card asserted that Daniel Chacko made mention of in Ext.A1 is their father. Therefore, the trial court ventured to consider as to who actually was the pattadar. Though the contesting defendants who are the appellants in RSA No.102/2006 contended that the patta issued in the name of Daniel Chacko made mention of in Ext.A1 is the husband of the first defendant, they could not produce any evidence to substantiate the case.

10. It was strenuously argued by the learned senior counsel for the appellants that the courts below have proceeded on the wrong assumption that Chacko Daniel and Daniel Chacko are one and the same persons, though in fact they were two different persons. But as already pointed out, the appellants could not establish the same before the trial court. Both the fact finding courts below have concluded that the pattadar in Ext.A1 is the father of the plaintiffs. Under such a situation, it cannot be said

that the decree of partition granted by the trial court in O.S.No.68/1999 is bad in law. As the property is partible, the claim of the appellants that they are in exclusive possession of the entire property will not stand.

The appellants have failed in establishing that any question of law has been wrongly decided by the courts below. Therefore, an interference by this Court in these second appeals is little and therefore, the appeals fail and accordingly, they are dismissed.

sd/- A.V.RAMAKRISHNA PILLAI
JUDGE

CSS/

true copy

P.S.TO JUDGE