

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

THURSDAY, THE 20TH DAY OF AUGUST 2015/29TH SRAVANA, 1937

OP(C).No. 3114 of 2012 (O)

IN OS 100/2010 of MUNSIF COURT, HOSDRUG

PETITIONERS:

1. K.P.SUKUMARAN AGED 51 YEARS
S/O. UNDACHI, KIZHAKKUMKARA, AJANUR VILLAGE AND POST
HOSDURG TALUK, KASARAGOD DISTRICT.
2. P.V. GOPINATHAN
S/O. UNDACHI, KIZHAKKUMKARA, AJANUR VILLAGE AND POST
HOSDURG TALUK, KASARAGOD DISTRICT.
3. DEVI, W/O. P.V. GOPINATHAN
S/O. UNDACHI, KIZHAKKUMKARA, AJANUR VILLAGE AND POST
HOSDURG TALUK, KASARAGOD DISTRICT.

BY ADV. SRI.SURESH KUMAR KODOTH

RESPONDENTS:

1. PANDARAVEEDU ONAKKAN
S/O. RAMAN, RESIDING AT NALEKKARA
PERIYA VILLAGE AND POST
HOSDURG TALUK AND DISTRICT - 671 316.
2. PANDARAVEEDU DAMODARAN,
AGED 70 YEARS, S/O. POKKAN, DEVI NIVAS
VELLIKOTH, AJANUR VILLAGE - 671 531.
3. PANDARAVEEDU KORAN, AGED 67 YEARS,
S/O. KUNHAMMA, NEAR KURUMBA BHAGAVATHI TEMPLE
AJANUR KADAPURAM, P.O. KOLAVAYAL - 671 531.
4. PANDARAVEEDU LAKSHMI
AGED 62 YEARS, S/O. POKKAN, THAMARAKULAM
HOSDURG VILLAGE - 671 315.
5. PANDARAVEEDU RAMAKRISHNAN KARANAVAR
AGED 44 YEARS, S/O. KOTTANKUNHI, PANDARAVEEDU THARAVAD
KIZHAKKUMKARA, P.O. AJANUR -671 531.
6. PANDARAVEEDU GANGADHARAN,
AGED 58 YEARS, S/O. KUNHIRAMAN, KURUNTHUR ROAD.P.O
PADNEKAD - 671 314..
7. V.V. KORAN
AGED 62 YEARS, S/O. BHATIYAN, VAYALIL

VELLIKOTH - 671 315.

8. PANDARAVEEDU RAVI,
AGED 50 YEARS, S/O. AMBADI, PALAI
PUTHARIYADUKKAM -671 315.
9. PANDARAVEEDU RAJENDRAN
AGED 45 YEARS, S/O. KARUNAKARAN
THMARAKULAM HOSDURG VILLAGE
P.O. KANHANGAD - 671 315.
10. PANDARAVEEDU DISNESH,
AGED 42 YEARS, S/O. KUTTIYAN, MAKLIKOT KIZHAKKUMKARA
AJANUR - 671 531.
11. PANDARAVEEDU KUMARAN
AGED 48 YEARS, S/O. ROHINI
S.N. POLITECHNIC KUSHAL NAGAR.P.O
KANHANGAD - 671 315.
12. PANDARAVEEDU BALAMANI
AGED 50 YEARS, W/O. RAGHAVAN, KOTTACHERY.P.O
KANHANGAD- 671 315.
13. THE PRESIDENT,
PULIKARINGALI AMMA, DEVASTANAM
PANDARAVEEDU KIZHAKKUMKARA HAVING ITS OFFICE
AT PANDARAVEEDU TARAWAD
KIZHAKKUMKARA.P.O, AJANUR - 671 315.

R1 TO 12 BY ADVS. SRI.T.SETHUMADHAVAN
SRI.PUSHPARAJAN KODOTH
SRI.K.JAYESH MOHANKUMAR

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 20-08-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP(C)NO.3114 OF 2012

APPENDIX

PETITIONERS' EXHIBITS:

EXHIBIT P1: TRUE COPY OF THE PLAINT IN OS NO,100/2010.

EXHIBIT P2: TRUE COPY OF THE WRITTEN STATEMENT IN OS NO.100/2010

EXHIBIT P3: TRUE COPY OF IA NO.1793/2011 IN OS NO.100/2010.

EXHIBIT P4: TRUE COPY OF THE COUNTER FILED BY RESPONDENTS/PLAINTIFFS

EXHIBIT P5: TRUE COPY OF THE ORDER DATED 17/7/2012 IN IA NO.1793/2011

RESPONDENTS' EXHIBITS: NIL

//TRUE COPY//

P.A.TO JUDGE

sm

SUNIL THOMAS, J.

O.P.(C) No. 3114 of 2012

Dated this the 20th day of August, 2015

JUDGMENT

The defendants in OS No.100/2010 of Munsiff court, Hosdurg, are the petitioners herein.

2. The respondents filed the above suit, seeking an order of injunction restraining the petitioners herein, who are defendants, from demolishing the thatched house or constructing a new house or in any manner interfering with peaceful possession of the property by the members of the 'Pandaramveed Tharwad'.

3. According to the plaintiffs, the suit property belonged to 'Pandaramveedu Tharwad' on Janmam right. There existed an old thatched house, constructed with laterite stones and mud walls in the suit property. The mother of the defendants, Undachi, being a member of the 'Tharwad', was permitted about 38 years back, by the then 'Karanavan', to reside in that house. Even after her death, the children continued to reside there. Alleging that they were attempting to tamper with the

building or to modify the building, the suit was laid. The defendants appeared and filed a detailed statement wherein, inter alia, they denied the right of the plaintiffs over the disputed building. It was contended that the mother of the defendants was not permitted by the 'Karnavarn' to reside in the building mentioned in the plaint. On the other hand, defendants contended that she was permitted to erect a homestead in the property and it was constructed by her. It was claimed that she had 'Kudikidappu' right as defined under the land reforms act, over the property. It was pleaded that with respect to 7 cents of land appurtenant to the above 10 cents, she had perfected adverse possession and that land was being used by the defendants for their ingress and egress.

4. Claiming that an issue as to whether the right of 'Kudikidappu' arises in the present suit, was not raised by the court below, an Interlocutory application was filed by the defendants as IA No.1739/2011. The court below after hearing both sides, dismissed the application, holding that the question of 'Kudikidappu' does not arise for consideration in the present suit. This is assailed in this Original Petition.

5. Heard both sides and examined the records.

6. The court below proceeded on the basis that the parties were the members of the 'Tharwad'. The court, considering this fact, concluded that being a member of 'Tharward', the predecessor of the defendants could not have set up a claim of 'Kudikidappu'. It was further concluded that, factually the claim of the defendant that Undachi had constructed the house, does not appear to be correct. It was also held that she has also set up inconsistent plea in relation to the adverse possession. On that premise, relying on the settled legal principles, the court below concluded that the question of 'Kudikidappu' does not arise in this suit for injunction and answered the point.

7. Having regard to the fact that Undachi was a member of the 'Tharwad', it is doubtful as to whether such a claim is sustainable or not. From the nature of the pleadings set up, the conclusion arrived at, by the court below seems to be based on cogent reasons and proper application of mind on the available facts, arising from the pleadings. Hence I cannot find any illegality in the impugned order.

8. The learned counsel for the defendants contended that

they have moved the Land Tribunal with an original application for purchase of 'Kudikidappu' which is pending. The apprehension of the learned counsel was that the impugned order may stand in the way of an adjudication of the rights and claims before Land Tribunal. Needless to say that the conclusion arrived at by the court below in the course of discussion of this IA, was only for the limited purpose of considering whether the question of 'Kudikidappu' arises from the pleadings for reference under the Land Reforms Act in the suit. Hence apprehension of the learned counsel does not appear to be justified.

In the above circumstance, the original petition fails and the same is dismissed.

Sd/-
SUNIL THOMAS, JUDGE

sm/