

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

WEDNESDAY, THE 18TH DAY OF FEBRUARY 2015/29TH MAGHA, 1936

OP(C).No. 433 of 2015 (O)

(Against the order in I.A.962/12 in O.S.167/12 dtd.20.7.13 of MUNSIFF
COURT, ALUVA AND ORDER DTD. 5.1.15 IN I.A.1631/13 IN
O.S.167/2012 OF MUNSIFF COURT, ALUVA)

PETITIONER/PETITIONER IN IA:

P.RAVINDRANATH,
SON OF LATE ADIYODI, RESIDING AT PRAGATHY, P.S. ROAD
KALOOR, ERNAKULAM - 17.

BY ADVS.SRI.N.KRISHNA PRASAD
SRI.IMAM GRIGORIOS KARAT

RESPONDENT/RESPONDENT:

SMT.PADMINI K. NAIR
W/O. KUMARAN NAIR, ANUPAMA, CHERRY COMPLEX,
POORNA NAGAR, ALUVA-1.

THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON
18-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP(C).No. 433 of 2015 (O)

APPENDIX

PETITIONER'S EXHIBITS :

EXT.P1:TRUE COPY OF OS NO.167/12.

EXT.P2: TRUE COPY OF THE WRITTEN STATEMENT FILED BY THE
DEFENDANT IN OS NO. 167/2012.

EXT.P3: TRUE COPY OF IA NO.962/2012 IN OS NO.167/12.

EXT.P4: TRUE COPY OF THE OBJECTION FILED BY THE RESPONDENT IN IA
NO.962/12 DATED 5.10.2012.

EXT.P5: TRUE COPY OF THE ORDER IN IA 962/2012 DATED 20.7.2013.

EXT.P6: TRUE COPY OF THE PETITION IA NO. 1631 OF 2013) TO REVIEW
THE ORDER IN IA NO. 962/2012 ALONG WITH THE DOCUMENTS.

EXT.P7: TRUE COPY OF THE OBJECTION FILED BY THE RESPONDENT IN
IA NO.1631/13.

EXT.P7(a): TRUE COPY OF THE REPORT DATED 26.5.2012.

EXT.P7(b): TRUE COPY OF THE REPORT DATED 22.6.2012.

EXT.P8: TRUE COPY OF THE ORDER DATED 5.1.2015 IN IA 1631/2013 IN
OS NO.167/2012.

EXT.P9: TRUE COPY OF THE INTERIM APPLICATION DATED 1.7.2012.

RESPONDENT'S EXHIBITS: NIL

// True Copy //

P.A. to Judge.

smp

P.BHAVADASAN, J.

Original Petition (Civil) No.433 OF 2015

Dated this the 18th day of February, 2015.

J U D G M E N T

Aggrieved by the order dated 05.01.2015 in I.A.No.1631/2013 in O.S.No.167/2012, the petitioner before the court below has come up with this original petition under Article 227 of the Constitution of India.

2. The respondent as plaintiff laid O.S.No.167/2012 claiming right over the entire plaint schedule property. It is not in dispute that the plaint schedule property originally belonged to one Raman Nair who is the uncle of the plaintiff in the suit. He admittedly executed a Will by which 32 and odd Ares of land were bequeathed to the plaintiff and her brother Gopinathan in equal shares. The claim put forward by the plaintiff was that even though as per the Will, Gopinathan was given certain extent of land, he had not taken possession of the same nor had he enjoyed the property. All the while the plaintiff was in actual

possession and enjoyment of the entire property treating it as her own property and she has been taking income from the property. She has also averred in the plaint that to her knowledge, Gopinathan had not executed any document. On the allegation that certain persons had come to measure the property and since the defendant is claiming title to the property, plaintiff laid the suit for the following relief.

- "A) പ്രതിയോ, പ്രതിയുടെ കീഴിലാറെങ്കിലുമോ, അന്യായപട്ടിക വസ്തുവിൽ ബലാൽ പ്രവേശിക്കുകയോ, നാശനഷ്ടങ്ങൾ ഉണ്ടാക്കുകയോ, അന്യായപട്ടികയുടെ ഇപ്പോഴുള്ള കിടപ്പിനോ, അതിർത്തികൾക്കോ രൂപഭേദം വരുത്തുകയോ, അന്യായപട്ടിക വകകളിൽ വാദിക്കുള്ള അവകാശ കൈവശങ്ങൾക്കും, അനുഭവത്തിനും ദോഷം വരുത്തുക രീതിയിൽ യാതൊരുവിധമായ പ്രവർത്തികളും ചെയ്ത് പോകരുതെന്നും പ്രതിയേയും, ടിയാന്റെ ആളുകളേയും ശാശ്വതമായി വിലക്കിയും, നിരോധിച്ചും ഒരു വിധിയുണ്ടാകണം.
- B) ഈ വ്യവഹാരത്തിലെ സകല കോടതി ചിലവുകളും പ്രതിയിൽ നിന്നും ഈടാക്കി തരുവിയ്ക്കണം.
- C) വഴിയെ അപേക്ഷിക്കുന്നതും ബഹുമാനപ്പെട്ട കോടതിക്ക് ന്യായയുക്തമെന്ന് തോന്നുന്നതുമായ ഇതര നിവൃത്തികളും അനുവദിയ്ക്കണം".

3. The suit was resisted by the defendant. He pointed out

that Gopinathan who obtained half right over the property left behind by Raman Nair had executed Ext.A1 sale deed No.4611/1997 dated 26.11.1997 in his favour. It was contended that the plaintiff cannot claim right over the entire property and at best her right is confined to half right over the property left behind by Raman Nair.

4. Relying on the decision in **Maria Margarida Sequeria Fernandes and Ors. vs. Erasmo Jack de Sequeria (Dead) through L.Rs** (AIR 2012 Supreme Court 1727), defendant before the court below moved I.A.No.962/2012 in O.S.No.167/2012 seeking dismissal of the suit based on the dictum laid down in the said decision. The court below, after considering the rival contentions and also the materials before it, came to the conclusion that the suit could not be thrown out at the threshold as contended by the defendant and decided to proceed on with the suit and accordingly dismissed I.A.No.962/2012 by order dated 20.07.2013. Seeking review of the said order, I.A.No.1631/2013 was filed by the petitioner herein. He pointed out that the spirit of the decision referred to

above has not been properly understood by the court below and none of the criteria laid down by the Apex Court in the said decision are satisfied in the present case and therefore the suit is not maintainable. The court below found that the contention cannot be accepted as such and dismissed the petition for review.

5. Before this Court also learned counsel appearing for the petitioner laid special emphasis on paragraphs 70 to 75 of the decision in **Maria Margarida Sequeria Fernandes and Ors. vs. Erasmo Jack de Sequeria (Dead) through L.Rs** (AIR 2012 Supreme Court 1727). Learned counsel went on to point out that if the principles laid down in the said decision are applied, it can be seen that the plaintiff has not produced any document to show her title to the entire property and there is nothing to show that she has any possession over the entire property. If that be so, court below was not justified in dismissing the application for dismissal of the suit and also the review petition.

6. Though the argument may look attractive at the first blush, on a close scrutiny, it can be found that it is devoid of merit. A careful reading of the plaint indicates that what was

claimed by the plaintiff was title over half share of the property referred by the Will and in respect of the other share of the property, she claimed only possessory title. She feigned ignorance about any document executed by Gopinathan and asserted that she was in actual possession of the entire property ever since the death of Raman Nair. She also pointed out that after the death of Raman Nair, Gopinathan did not take possession of his half share and there was no separating boundary between the two shares and the property continued to lie as a contiguous plot. On the basis of the said right, she laid the suit.

7. True, defendant produced his document of title and possession certificate. Except for saying that the plaintiff was aware of the sale deed, nothing more is stated in the written statement about the claim put forward in the plaint that Gopinathan had never executed any document. Of course, in the review petition, petitioner has produced several documents to show that he was in actual possession over the half share obtained by Gopinathan consequent on the death of Raman Nair.

But that was only at the time of review. Even assuming what the defendant says is true i.e. he has obtained only half share of the property of Gopinathan, that cannot be a quietus to the suit. The claim, as already noticed, is one regarding title over half share of the property and title by adverse possession over the other half. Whether that claim is justifiable or not is a different question.

8. When one goes to the facts of the decision relied on by the learned counsel for the petitioner, it can be seen that that was a case where the person concerned had absolutely no right i.e. he neither had title nor possession over the property and successfully managed to keep away the original owner of the property. Claimant in that case went to the extent of obtaining prohibitory injunction while the respective person was in actual physical possession of the property. It was in that context that the Apex Court cautioned the court that while receiving a suit on file and considering the Interlocutory Applications etc. due care will have to be taken to show that some right is established by the person concerned.

9. One fails to understand how the said principle is

applicable to the facts of the present case. Plaintiff and defendant traced title to the Will executed by Raman Nair. A careful reading of the plaint does not indicate that the plaintiff in fact claims title to the entire property. So for the other half she claims possessory title. Whether that claim is sustainable or not is a different question. The plaintiff has also stated in her plaint that there is no demarcating boundary between the two shares bequeathed by Raman Nair. Even accepting the argument advanced by the petitioner that the plea of the plaintiff regarding non execution of any document by Gopinathan was false and she was aware of the same and also that the petitioner had exercised actual possession over the property, still the suit could not be dismissed for the simple reason that she has averred that after the death of Raman Nair, Gopinathan had not taken possession of his share and there was no demarcating boundary between the two shares and the plot continued as a single common plot.

10. Learned counsel appearing for the petitioner pointed out that the petitioner had moved this Court for obtaining survey of property in relation to the property obtained by him as per the

document executed by Gopinathan. Survey plan is produced before this Court as Ext.P6. Ext.P6 also indicates that there is no physical boundary as such dividing the two properties.

11. May be that the plaintiff had made a very tall claim. But certain aspects speak for themselves. She has title at least over half share and there is nothing to show that two plots are demarcated by well defined boundaries. Whether she is able to prove possession of the entire property is a different matter. It is here that one has to notice that she lays claim by adverse possession over the said portion of the property over which the defendant asserts his title.

12. It could not be said that the court below was unjustified in not accepting the plea made by the petitioner herein that the principle laid down in the decision cited above is applicable to the facts of the present case. It is not a case where there is absolute want of pleadings or right in favour of a person who initiated legal proceedings. It at best could be a case where false claim is made in respect of a portion of property. As already noticed, even assuming that the argument is accepted, suit could not be

thrown out.

For the above reasons, this Court finds no grounds to interfere with the impugned order. This original petition is without merits and it is accordingly dismissed.

Sd/-

**P.BHAVADASAN
JUDGE**

smp