

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

WEDNESDAY, THE 30TH DAY OF SEPTEMBER 2015/8TH ASWINA, 1937

RSA.No. 449 of 2012 ()

**AGAINST THE JUDGMENT & DECREE IN AS.NO. 18/2009 OF ADDL.SUB COURT,
IRINJALAKUDA DATED 08-11-2011
AGAINST THE JUDGMENT & DECREE IN OS.NO. 523/2006 OF MUNSIFF COURT,
KODUNGALLUR DATED 12-12-2008**

APPELLANT/APPELLANT/PLAINTIFF :

**SARALABAI
AGED 58, W/O.SUBRAMANIAN, THARAYAPPURATH VEEDU
PERINJANAM VILLAGE & DESOM, KODUNGALLUR TALUK.**

BY ADV. SRI.T.H.ABDUL AZEEZ

RESPONDENTS/RESPONDENTS/DEFENDANTS :

- 1. UNNIKRISHNAN NAIR
S/O.KOCHUMALU AMMA, MALIYEKKAL VEEDU
PERINJANAM VILLAGE & DESOM, KODUNGALLUR TALUK
PIN-680 686.**
- 2. SUKUMARAN NAIR
S/O.KOCHUMALU AMMA, MALIYEKKAL VEEDU
PERINJANAM VILLAGE & DESOM, KODUNGALLUR TALUK
PIN-680 686.**

**THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION
ON 30-09-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

Mn

P.B.SURESH KUMAR, J.

R.S.A.No.449 of 2012

Dated this the 30th day of September, 2015

JUDGMENT

The plaintiff in the suit is the appellant.

2. The suit was one for injunction. The case of the plaintiff is that the plaint schedule property measuring 17 ¼ cents was obtained by her as per Ext.A3 sale deed; that she is in absolute possession and enjoyment of the same and that the defendants who have nothing to do with the plaint schedule property are attempting to trespass into the said property. The defendants contended that the suit property belonged to Maliekkal Ganapathy Devaswom; that large extent of property including the plaint schedule property, owned by the Devaswom and which were in the possession of strangers, were recovered by the Devaswom as per the decree in O.S.No.299 of 1985 and that the plaintiff who is claiming title to the plaint schedule property under one of the defendants in the said suit is not

entitled to any relief in the suit. The trial court found that the plaint schedule property is part of item No.7 of the plaint schedule property in O.S.No.299 of 1985 and that therefore, the vendor of the plaintiff had no right at all to convey by way of sale the plaint schedule property to the plaintiff as per Ext.A3 sale deed. Consequently, the suit was dismissed. Though the plaintiff preferred an appeal challenging the decision of the trial court, the appellate court, on a reappraisal of the materials on record, confirmed the decision of the trial court. The plaintiff is aggrieved by the concurrent decisions of the courts below.

3. Heard the learned counsel for the appellant.

4. As noticed above, the plaint schedule property is 17 ¼ cents in Sy.No.192/3. The case of the plaintiff that she has acquired title and possession of the said property by virtue of Ext.A3 sale deed. Ext.A3 sale deed is a document executed in the year 1990. The case of the defendants is that the plaint schedule property is part of item No.7 in O.S.No.299 of 1985. Ext.B2 is the certified copy of the decree in O.S.No.299 of 1985. The trial court found that the plaint schedule property is part of item No.7 in O.S.No.299 of 1985. The trial court also found that the vendor of

the plaintiff was defendant No.9 in the said suit. There is no dispute to the fact that the decree in O.S.No.299 of 1985 was executed. The defendants in the suit are the office bearers of the managing committee of the temple. Though the plaintiff has a case that the property covered by Ext.A3 sale deed is not part of plaint schedule item No.7 property in O.S.No.299 of 1985, the said case of the plaintiff has not been established by her. In the said circumstances, I do not find any merit in the second appeal and the same is accordingly dismissed.

P.B.SURESH KUMAR, JUDGE.

smm