

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

WEDNESDAY, THE 25TH DAY OF NOVEMBER 2015/4TH AGRAHAYANA, 1937

RSA.No. 612 of 2010 ()

**JUDGMENT DATED 31-01-2009 IN AS 89/2004 OF SUB COURT, THIRUVALLA
JUDGMENT DATED 07-07-2004 IN OS 574/1998 OF MUNSIF COURT, THIRUVALLA**

APPELLANT(S)/LEGAL HEIRS OF APPELLANT/LEGAL HEIRS OF PLAINTIFF:

- 1. VALSALA V.A., D/O. LATE SRI. AYYAPPAN,
AGED 36 YEARS, RESIDING AT VEEMPATHUMURIYIL,
THURUTHICADU P.O., MALLAPPALLY, PATHANAMTHITTA.**
- 2. PONNAMMA GOPI, W/O. GOPI, AGED 55 YEARS,
JAYABHAVAN, MALAKKARA P.O.,
CHENGANNUR (VIA) PATHANAMTHITTA.**
- 3. REMA VENU RAJAN, W/O. VENU, AGED 42 YEARS,
RESIDING AT DUBAI, POST BOX NO. 1247, DUBAI, REPRESENTED BY HER
POWER OF ATTORNEY HOLDER VALSALA V.A.,
D/O. LATE SRI. AYYAPPAN, AGED 36 YEARS,
RESIDING AT VEEMPATHUMURIYIL,
THURUTHICADU P.O., MALLAPPALLY, PATHANAMTHITTA.**

BY ADV. SRI. R. SREERAJ

RESPONDENT(S)/RESPONDENTS/DEFENDANTS:

- 1. STATE OF KERALA, REPRESENTED BY
DISTRICT COLLECTOR, PATHANAMTHITTA.**
- 2. EXECUTIVE ENGINEER (ROADS), PWD OFFICE,
PATHANAMTHITTA.**
- 3. ASSISTANT EXECUTIVE ENGINEER (ROADS),
PWD DIVISIONAL OFFICE, MALLAPPALLY.**
- 4. P.K. KRISHNADAS, S/O. KUMARAPANICKER,
PULIPRAMANNATH, THURUTHIKKADUMURI, KALLOOPPARA.**
- 5. C.P. PRASANNAKUMARA KAIMAL,
S/O. PARAMESWARA KURUP, CHAPPAN VEETIL,
THURUTHIKKADUMURI, KALLOOPPARA.**

**R1-R3 BY GOVERNMENT PLEADER SRI. JOBY JOSEPH
R5 BY ADV. SRI. K. P. SREEKUMAR**

**THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON
25-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

P.B.SURESH KUMAR, J.

R.S.A. No.612 of 2010

Dated 25th November, 2015.

J U D G M E N T

The legal representatives of the plaintiff in a suit for possession are the appellants in this second appeal.

2. The suit property which lies on the side of a public road belonged to the father of the fourth defendant. According to the plaintiff, she was put in possession of the suit property by its owner on an oral lease arrangement. The fourth defendant was the owner of the property on the west of the suit property. On 3.6.1993, the plaintiff was evicted from the suit property by the Public Works Department of the State on the premise that the same is a road puramboke. According to the plaintiff, she was evicted from the suit property at the instance of the fourth defendant. It is also her case that immediately after the eviction, the fourth defendant had enclosed the suit property with his property on its west. It is alleged by the

plaintiff that the suit property is not a road puramboke and that the third defendant had no authority to evict her. It is also alleged by the plaintiff that the fourth defendant had subsequently transferred the property in his possession including the suit property to the fifth defendant. The suit was filed, in the circumstances, for possession of the suit property on the strength of the previous possession of the plaintiff. Defendants 3 and 5 contested the suit by filing separate written statements. The third defendant contended that the suit property is a road puramboke and the fifth defendant contended that the suit property belongs to him. The trial court found that the suit property is not a road puramboke. Nevertheless, the suit was dismissed holding that the suit for possession based on previous possession is not maintainable against the fifth defendant who is the true owner of the property. According to the trial court, a suit for possession on the strength of previous possession is maintainable against the true owner only if the same is instituted in accordance with Section 6 of the Specific Relief Act. Though the matter was

taken up in appeal by the plaintiff, the appellate court confirmed the decision of the trial court. The legal representatives of the plaintiff, who are aggrieved by the concurrent decisions against them, have thus come in this second appeal.

3. Heard the learned counsel for the appellants as also the learned counsel for the fifth respondent.

4. A person in possession of a property and exercising peaceably the ordinary rights of ownership is presumed to have perfect title over the property against the whole world except the true owner. In the event of disturbance of the said possession by a third party, the person in possession can certainly maintain a suit for possession. Article 64 of the Schedule to the Limitation Act deals with suits based on previous possession when a party while in possession of the property has been dispossessed. The period of limitation prescribed for such suits under Article 64 is 12 years from the date of dispossession. Article 64 is restricted to suits for possession at the instance of persons who having been in

possession and having subsequently lost the possession either by dispossession or discontinuance. In a suit for possession based on previous possession, if the defendant raises the question of title, the plaintiff must establish a better title to succeed in the suit. [See **Nair Service Society Ltd. v. K. C. Alexander** (AIR 1968 SC 1165)]. Section 6 of the Specific Relief Act is an exception to the said principle. The policy behind Section 6 of the Specific Relief Act is to provide a quicker and summary remedy for persons who are dispossessed of immovable properties. As clarified in Section 6(4) of the said Act, a suit under Section 6 will not preclude the defendant from recovering the property based on title. In other words, a suit under Section 6 of the Specific Relief Act is maintainable even against the true owner of the property. The remedy under Section 6 of the Specific Relief Act, however, can be invoked only within six months from the date of dispossession as provided for in Section 6(2)(a) of the said Act. It is thus clear that a suit for possession based on previous possession, if not instituted before six months from the date of dispossession, is

not maintainable against the true owner of the property. The correctness of the impugned decisions is to be examined in the light of the aforesaid principles.

5. Going by the pleadings of the plaintiff, she was dispossessed by the third defendant on 3.6.1993. The suit was filed only on 13.8.1998. In the pleadings, the plaintiff concedes the title of defendants 4 and 5. The case of the plaintiff is only that the suit property is not a road puramboke and that she was dispossessed unauthorizedly by the State. In so far as the plaintiff concedes the title of defendants 4 and 5 over the suit property, the suit instituted beyond six months from the date of dispossession cannot be held to be maintainable.

The second appeal, in the circumstances, is devoid of merits and the same is accordingly, dismissed.

Sd/-

P.B.SURESH KUMAR, JUDGE.

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