

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

FRIDAY, THE 9TH DAY OF OCTOBER 2015/17TH ASWINA, 1937

RSA.No. 937 of 2010 (C)

**JUDGMENT DATED 19-09-2009 IN AS 20/2008 OF SUB COURT, QUILANDY
JUDGMENT DATED 18.12.2007 IN OS 76/2006 OF MUNSIFF COURT, QUILANDY**
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APPELLANT(S)/APPELLANTS/PLAINTIFFS:

- * 1. PARAKKANDY UNICHIRA,
 W/O.LATE PARAKKANDY CHANDU. (DIED)
 LR'S 2 TO 8 ARE IMPEADED
2. PARAKKANDY BALAN,
 S/O.LATE PARAKKANDY CHANDU.
3. PARAKKANDY SINKAN ALIAS UKKAPPAN,
 S/O.LATE PARAKKANDY CHANDU.
4. PARAKKANDY KELUKUTTY,
 S/O.LATE PARAKKANDY CHANDU.
5. PARAKKANDY RAMAKRISHNAN,
 S/O.LATE PARAKKANDY CHANDU.
6. PARAKKANDY KARTHIAYANI,
 D/O.LATE PARAKKANDY CHANDU.
7. PARAKKANDY KAMALAKSHI,
 D/O.LATE PARAKKANDY CHANDU.
8. PARAKKANDY THANKAM,
 D/O.LATE PARAKKANDY CHANDU.
 ALL ARE RESIDING AT VELUR AMSOM, KOYILANDY TALUK
 KOZHIKODE DISTRICT.
- * THE APPELLANTS 2 TO 8 ARE RECORDED AS LEGAL HEIRS
 OF DECEASED I APPELLANT VIDE ORDER DTD.13.1.2012 IN MEMO
 CF.NO.7521/2011.

**BY ADVS.SRI.T.KRISHNANUNNI (SR.)
 SRI.JIBU P THOMAS
 SRI.P.S.APPU
 SRI.A.R.NIMOD
 SRI.C.A.ANOOP
 SRI.T.C.SURESH MENON**

msv/

RSA.No. 937 of 2010 (C)

RESPONDENT(S)/RESPONDENTS/DEFENDANTS:

1. ATHOLIKUNIYILTHERU SREE MAHA GANAPATHI
KSHETHRA COMMITTEE, REPRESENTED BY ITS PRESIDENT,
RAGHAVAN, S/O.KANNAN, RESIDING AT VELUR AMSOM,
KOYILANDY TALUK, KOZHIKODE DISTRICT-673 305.
2. ELAMAKKANDY NARAYANAN,
S/O.UKKAPPAN, RESIDING AT MANDOTH HOUSE, VELUR AMSOM,
KOYILANDY TALUK, KOZHIKODE DISTRICT-673 305.
3. KAKKANKANDY DAMODHARAN,
S/O.UNICHATHU, RESIDING AT MANDOTH HOUSE, VELUR AMSOM,
KOYILANDY TALUK, KOZHIKODE DISTRICT-673 305.
4. BABU, S/O.NARAYANAN, RESIDING AT
KAKKANKANDY HOUSE, VELUR AMSOM, KOYILANDY TALUK,
KOZHIKODE DISTRICT-673 305.
5. NARAYANAN K.K., S/O.UNICHATHU,
RESIDING AT KAKKANKANDY HOUSE, VELUR AMSOM,
KOYILANDY TALUK, KOZHIKODE DISTRICT-673 305.
6. MOHANAN A.C., S/O.CHATHUKUTTY,
RESIDING AT ALINCHUVATTIL HOUSE, VELUR AMSOM,
KOYILANDY TALUK, KOZHIKODE DISTRICT-673 305.
7. CHATHUKUTTY, S/O.UKKAPPAN,
RESIDING AT ELAMAKKANDY HOUSE, VELUR AMSOM,
KOYILANDY TALUK, KOZHIKODE DISTRICT-673 305.

R1-R7 BY ADV. SRI.T.SETHUMADHAVAN (SR.)
SRI.PUSHPARAJAN KODOTH
SRI.K.JAYESH MOHANKUMAR
SMT.VANDANA MENON
SMT.N.DEEPA

THIS REGULAR SECOND APPEAL HAVING BEEN FINALLY HEARD ON
09-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

msv/

P.B.SURESH KUMAR, J.

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R.S.A.No.937 of 2010.

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Dated this the 9th day of October, 2015.

J U D G M E N T

The plaintiffs in a suit for declaration of title and injunction are the appellants in this Second Appeal.

2. The case of the plaintiffs is that the plaint schedule property belonged to their predecessor Chandu and that they have obtained title and possession over the same through Chandukutty who is the son of Chandu. The defendants denied the case of the plaintiffs that they have title and possession over the plaint schedule property. According to them, the plaint schedule property is part of the property dedicated for the use of the members of Hindu Chalya community by the members of Vadakke Mandot tarwad. They also contended that there is a temple in the plaint schedule property which was originally managed by

one Chappan as its Uralan and the temple is presently being managed by a committee of which the defendants are the members. The trial court found that the plaintiffs have not established title and possession over the plaint schedule property and consequently dismissed the suit. The appellate court, on a reappraisal of the evidence on record, confirmed the decision of the trial court. The plaintiffs who are aggrieved by the concurrent decisions of the courts below have thus come up in this Second Appeal.

3. Heard the learned Senior Counsel for the appellants as also the learned Senior Counsel for the respondents.

4. The case of the plaintiffs is that they have obtained title and possession over the plaint schedule property as per Exts.A2, A3 and A5 documents. The survey numbers of the property shown by the plaintiffs in the plaint schedule are 82/7 and 82/8. The Advocate Commissioner appointed in the suit has identified the plaint schedule

property as described in the plaint and as shown to him by the plaintiffs. Going by the report of the Advocate Commissioner, the plaint schedule property would come under Survey No.82/7 and 82/8. Exts.A2 and A3 documents relied on by the plaintiffs do not contain the survey number of the property. True, the survey numbers of the property are shown in Ext.A5. The survey numbers shown in Ext.A5 are 81/11 and 28/1 and 28/2. The definite case of the defendants is that the plaint schedule property is not the property covered by Exts.A2, A3 and A5 documents. The plaintiffs have not taken any steps to get the properties covered by Exts.A2, A3 and A5 documents identified with the help of the Advocate Commissioner and the Surveyor. It is in the said circumstances, the courts below took the view that there is absolutely nothing on record to show that the plaint schedule property is the property covered by Exts.A2, A3 and A5 documents. I do not find any reason to interfere with the concurrent decisions of the courts below.

5. The learned Senior Counsel for the plaintiffs attempted to convince me that the plaint schedule property is the property covered by Exts.A2, A3 and A5 documents by relying on the boundaries of the property shown in the said documents. Exts.A2 and A3 are documents executed about 110 years ago. Likewise, Ext.A5 is a document executed about 70 years ago. I am afraid, I am not authorised and empowered to undertake such an exercise, in exercise of my powers under Section 100 of the Code of Civil Procedure, that too at the instance of persons who had all the opportunity to establish the identity of the property covered by the said documents and failed to avail the opportunity.

In the result, the appeal is devoid of merits and the same is dismissed. Since the plaintiffs are non-suited for the reason that they failed to establish that the plaint schedule property is the property covered by Exts.A2, A3 and A5 documents, it is made clear that the dismissal of the appeal will not preclude the plaintiffs from instituting a fresh suit in

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respect of the properties covered by Exts.A2, A3 and A5 documents. All the interlocutory applications in the appeal are closed.

Sd/-
P.B.SURESH KUMAR,
(JUDGE)

kvs

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PA TO JUDGE.