

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.V.RAMAKRISHNA PILLAI

MONDAY, THE 25TH DAY OF MAY 2015/4TH JYASHTA, 1937

RSA.No.1004 of 2010 (C)

**AGAINST THE JUDGMENT DATED 27-01-2010 IN AS 161/2008 of II ADDL.SUB
COURT,KOZHIKODE.
AGAINST THE JUDGMENT DATED 23-09-2008 IN OS 317/2007 of ADDL.MUNSIFF
COURT-I,KOZHIKODE.**

APPELLANT/APPELLANT/PLAINTIFF:

**P.K.NALINI,W/O.POOVATHUMKANDY KARUNAKARAN,
RESIDING AT, 'KARUNA',VALAYANAD AMSOM DESOM,
KOZHIKODE.**

**BY ADVS.SRI.V.V.SURENDRAN
SRI.P.A.HARISH
SMT.RESMI NANDANAN**

RESPONDENT/RESPONDENT/DEFENDANT:

**POOVAKKOTH SAUDA,RESIDING AT KEERIYADATH PARAMBA,
NADUVATTOM AMSOM DESOM,KOZHIKODE.**

**R1 BY ADVS.SRI.R.SUDHISH
SMT.M.MANJU
SRI.K.R.RANJITH**

**THIS REGULAR SECOND APPEAL HAVING BEEN FINALLY HEARD
ON 03.03.2015 ALONG WITH CRP.630/2010,THE COURT ON 25-05-2015,
DELIVERED THE FOLLOWING:**

pk

A.V.RAMAKRISHNA PILLAI, J

**R.S.A.No.1004 of 2010
& C.R.P.No.630 of 2010**

Dated this the 25th day of May, 2015

JUDGMENT

The regular second appeal is directed against the judgment and decree in A.S.No.161/2008 on the file of II Additional Sub Court, Kozhikode, which arose out of the judgment and decree in O.S.No.317/2007 on the file of Additional Munsiff Court-I, Kozhikode. The Civil Revision Petition is directed against O.S.No.160/2008 of the same Sub Court which arose out of the decree and judgment in O.S.No.523/2007 on the file of the same Munsiff Court.

2. O.S.No.317/2007 was instituted by the appellant for permanent prohibitory as well as mandatory injunction, against the respondent, alleging that she acquired the plaint schedule property by a registered jenmam deed of the year 1971. According to the appellant, the property is situated in Re-survey Nos.21-19-568, 569, 570, 571, 572, 579 and 580 in Panniyankara Village of Kozhikode Taluk and it is a strip of land,

bounded on the east by the Calicut Madras Trunk Road (NH 17) and on the west by the railway line. She alleged that her predecessor in interest had executed a kanam deed in favour of one Sundarampalli Pathumabi in the year 1929. As per the kanam deed, Sundarampalli Pathumabi was given an extent measuring $2 \frac{1}{3} \times 15$ six feel koles in Re-Survey No.568. It is also alleged that the property held by the said Sundarampalli Pathumabi pursuant to the kanam deed of the year 1929 was bounded by the road on the East and remaining the property of the landlord on the west. However, in the description, the boundaries were mistakenly shown as road on the East and railway line on the West, as could be seen from the purchase certificate obtained by the successor in interest of the original holder as evidenced by Exts.A17 and A18 as well as two earlier suits filed by the plaintiff against the successors in interest of kanam holder evidenced by Exts.A3 to A5, A10 and A11. According to the appellant, plaint A schedule property is

comprised in the Sy.No.568. The defendant had purchased a portion of the property held by Sundarampalli Pathumabi from a karaima holder of Sundarampalli Pathumabi. According to the appellant, she is not having any land over and above the extent held by Sundarampalli Pathumabi. The suit was filed when the respondent/defendant tried to trespass upon the remaining portion of the plaint A schedule property.

3. The respondent/defendant opposed the suit disputing the identity of the property among other contentions.

4. The appellant filed O.S.No.523/2007 for mandatory injunction and compensation, claiming title to plaint A schedule property on the basis on the registered deed of 1971 referred the above. Plaint A schedule property is the strip of land, having National Highway on the East and the railway line on the West. Plaint B schedule is an item of property, within Plaint A schedule, which was leased out by the predecessor in interest of the

petitioner to Sundarampalli Pathumabi, the predecessor in interest of the 1st respondent. The said property is bounded by the National Highway on the East and the remaining part of plaint A schedule on the West. The suit was filed when the 1st respondent put up a sign board trespassing into plaint A schedule property and also cut and removed a Venga tree.

5. The said suit was also opposed by the defendant.

6. Both the suits were tried jointly. The trial court dismissed the suits, holding that, the properties held by the defendant is bounded by the road on the East and the railway line on the West. The matter was taken in appeal before the lower appellate court, which held that the properties held by Sundarampalli Pathumabi is not bounded by the road on the East and the railway line on the West. According to the appellant, the documents show otherwise.

7. The grievance projected in the appeal is that

the findings in the original suit that the property of the Sundarampalli Pathumabi is bounded by the road on the East and the property of the plaintiff on the West, were ignored by the lower appellate court and on the basis of a stray sentence in the report of the Advocate Commissioner, it was held that the properties held by Sundarampalli Pathumabi is bounded by the railway line on the West and the property of the plaintiff on the East.

8. On the basis of the findings, the court below held that the appellant is not entitled for a decree in the suit for mandatory injunction. The revision is filed challenging the said judgment in view of the specific bar under the Code of Civil Procedure.

9. Arguments have been heard.

10. It can be seen from the impugned judgment, that the lower appellate court while dismissing the appeal, reversed the finding of the trial court, that the defendant is having title to a property which is having Calicut Madras Trunk road on the East and railway line on

the West as its boundaries. It, however, held that the property over which the defendant is having title is one which is bounded by the railway line on the West and the remaining property of the plaintiff on the East as its boundary. According to the learned Counsel for the appellant this goes against the findings of the earlier suit. It was on the basis of the said finding, A.S.No.160/2008 was dismissed. The revision was necessitated since the amount of compensation claimed in O.S.No.523/2007 is only Rs.10,000/-, and hence, he could not file a second appeal against the judgment and decree in O.S.No.523/2007.

11. The lower appellate court erred in holding that the kanam lease hold right of Sundarampalli Pathumabi starts from AX line (western side) shown in the plan prepared by the surveyor and not from the BY line (eastern side) shown in the plan. Relying upon a sentence in Ext.C3 report of the advocate commissioner it was held that the land leased out to Sundarampalli Pathumabi is

bounded by the rail on the West and the remaining property of the plaintiff on the East instead of road on the East and remaining property of the plaintiff on the West. This was on account of a wrong appreciation of Ext.C3 report. The lower appellate court ought to have read the report in its entirety. In Ext.C3 report the commissioner seems to be referring to certain constructions she saw on the south western corner of plaint A schedule (green shaded portion). Admittedly the dispute is with regard to the north western part of plaint A schedule (Orange shaded portion). The boundary of the south western corner has already been fixed as per Exts.A3 and A5 judgments in A.S.66/93 and S.A.351/98. The lower appellate court failed to properly appreciate A7 and A8 reports of the advocate commissioner in O.S.No.562/87 and A11 and A12 report of the advocate commissioner in O.S.No.113/74 which would go to show that the eastern boundary of the property held by Sundarampalli pathumabi is road.

12. The lower appellate court also failed to appreciate Ext.A17 report of the Revenue Inspector in its proper perspective. Ext.A17 was pursuant to an application made by the successor in interest of Sundarampalli Pathumabi for purchasing landlords right. Therefore, the presumption available in that observations and findings of the Land Tribunal with respect to the lands in questions are conclusive. On the basis of the entire materials placed on record, this Court is of the view that the case put forward by the appellant is true.

13. The appellant in one of the suits has claimed a compensation towards the value of the Vengana, cut and removed by the respondent. However, there is no convincing evidence to show what exactly is the value of the tree. Therefore, this Court is not in a position to grant any relief in respect of the same.

14. However, in the light of the materials now placed on record, the regular second appeal is allowed, permanent prohibitory injunction and mandatory

injunction as prayed for in O.S.No.113/74 is granted and the respondent is directed to demolish the constructions made in plaint A schedule property. In the event of failure to remove the same by the defendant, the appellant/plaintiff can get it removed through proper execution. C.R.P.No.630/2010 is allowed in part. The respondent/defendant is directed to remove the sign boards installed by him in plaint A schedule property. However, the prayer for compensation is disallowed.

Sd/-
A.V.RAMAKRISHNA PILLAI
JUDGE

VS

/TRUE COPY/

PA TO JUDGE