

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

FRIDAY, THE 30TH DAY OF OCTOBER 2015/8TH KARTHIKA, 1937

RSA.No. 1255 of 2012

**OS 2/1996 OF MUNSIF COURT, KARUNAGAPPALLY DATED 30-06-2003
RFA 141/2003 OF FIRST ADDITIONAL DISTRICT COURT, KOLLAM**

APPELLANT/APPELLANT/PLAINTIFF:

**K.R. ANIL, AGED 42 YEARS,
S/O.MANAKKODAN RAVEENDRAN VAIDYAN, KESAVA VILASATHU,
SMC-II, CHERTHALA NORTH MURI, CHERTHALA VILLAGE,
CHERTHALA TALUK.**

BY ADV. SMT.S.KARTHIKA

RESPONDENT(S)/RESPONDENTS/DEFENDANTS:

**1. GOPALAN DINAMONY, AGED 60 YEARS,
PARAMBIL VEEDU, ALAPPADU MURI,
KARUNAGAPPALLY-690518.**

**2. PONNAMMA USHUS, AGED 23 YEARS,
-DO-**

3. DINAMONY USHUS, -DO-

4. PONNAMMA USHARANI, AGED 20 YEARS, -DO-

**Addl.5. GANGADHARAN SUDHEESAN, AGED 39 YEARS,
KOLLASSERIL VADAKKATHU, MARUTHOORKULANGARA SOUTH,
KARUNAGAPPALLY-690518.**

**R1,R3 TO 5 BY ADVS. SRI.B.KRISHNA MANI
SMT.N.V.SANDHYA**

**THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON
30-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

PJ

P.B.SURESH KUMAR, J.

R.S.A.No.1255 of 2012

Dated this the 30th day of October, 2015

JUDGMENT

The plaintiff in a suit for declaration of title, recovery of possession and injunction is the appellant in this second appeal.

2. According to the plaintiff, he obtained the plaint schedule property, measuring 7 cents, in Sy.No.4590A of Karunagappilly village by virtue of Ext.A1 will from his mother's uncle Sadananthan; that out of 2 acres 70 cents covered by Ext.A1 will, he sold 15 cents to a third party as per Ext.A3 sale deed and the plaint schedule property is part of the remaining property covered by the

said will. It is alleged by the plaintiff that defendants 1 to 4 are asserting title to the plaint schedule property on the strength of Ext.A4 sale deed executed by Sadananthan. According to the plaintiff, Sadananthan had not sold any property in Sy.No.4590A as per Ext.A4 sale deed to defendants 1 to 4 and that the property purchased by them as per Ext.A4 sale deed is a property in Sy.No.4591A of Karunagappilly village. Initially, the suit was one for injunction. Later, the suit was amended and a prayer for declaration of title as also a prayer for recovery of possession were included in the plaint, alleging that after the institution of the suit, the defendants had trespassed into the plaint schedule property. The defendants contested the suit, contending inter alia that Ext.A1 will is not a genuine document; that the plaint schedule property is not part of Ext.A1 will and that the plaint schedule property is part of the property sold to them by Sadananthan as per

Ext.A4 sale deed. They also contended that the survey number of the property is mistakenly shown in Ext.A4 sale deed as 4591A instead of 4590A. The trial court dismissed the suit holding that the plaintiff has not proved the execution of Ext.A1 will. The trial court also found that the survey number of the property shown in Ext.A4 is a mistake and what was purchased by defendants 1 to 4 as per Ext.A4 is the plaint schedule property. The plaintiff has taken up the matter in appeal. The appellate court, on a re-appraisal of the materials on record, confirmed the decision of the trial court. The plaintiff who is aggrieved by the concurrent decisions of the courts below has thus come up in this second appeal.

3. Heard the learned counsel for the appellant.

4. Ext.A4 sale deed executed by Sadanandan in favour of defendants 1 to 4 is a document executed on the strength of Ext.B1 partition deed. The learned counsel for

the appellant, relying on Ext.B1 partition deed, contended that Ext.B1 partition deed contains not only properties in Sy.No.4590A, but also properties in Sy.No.4591 A and as such, there is no basis for the contention of the defendants that what was conveyed as per Ext.A4 sale deed is a property in Sy.No.4590A and not Sy.No.4591A as stated in the said document. As such, according to the learned counsel, the courts below acted illegally in accepting the case set up by the defendants.

5. In so far as the plaintiff claims title to the plaint schedule property on the strength of Ext.A1 will and in so far as the execution of the said document has been disputed by defendants, the correctness of the finding rendered by the courts below on the issue as to the identity of the property purchased by defendants 1 to 4 arises for consideration only when the plaintiff proves the execution of Ext.A1 will. Admittedly, Ext.A1 will has not been proved by

the plaintiff as provided for under Section 68 of the Evidence Act. In that view of the matter, I do not find any merit in the second appeal and the same is accordingly dismissed in limine.

P.B.SURESH KUMAR, JUDGE.

smm