

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

FRIDAY, THE 25TH DAY OF SEPTEMBER 2015/3RD ASWINA, 1937

RSA.No. 1482 of 2012

A.S.NO.149/2009 OF II ADDITIONAL DISTRICT COURT, ERNAKULAM

O.S.NO.421/2007 OF II ADDITIONAL MUNSIF COURT, ERNAKULAM

APPELLANT(S)/APPELLANTS/PLAINTIFFS :

1. MARY, AGED 57 YEARS,
W/O.LATE XAVIER @ SEBASTIAN, KAPPUNKAL HOUSE,
VALLARPADAM, MULAVUKADU VILLAGE, KANAYANNUR TALUK.
2. TENCY, AGED 33 YEARS,
D/O.LATE XAVIER @ SEBASTIAN, KAPPUNKAL HOUSE,
VALLARPADAM, MULAVUKADU VILLAGE, KANAYANNUR TALUK.
3. JENCY, AGED 26 YEARS,
D/O.LATE XAVIER @ SEBASTIAN, KAPPUNKAL HOUSE,
VALLARPADAM, MULAVUKADU VILLAGE, KANAYANNUR TALUK.

**BY ADVS.SRI.T.B.THANKAPPAN
SRI.T.THARIKUMAR
SRI.ASHISH VIDYADHARAN**

RESPONDENT(S)/RESPONDENT/DEFENDANT :

**MARIA JASEENTHA, AGED 49 YEARS,
W/O.JOLLY, PANVATHIL HOUSE, KUMBALAM,
KUMBAM VILLAGE, KANAYANNUR TALUK-682 536.**

**BY ADVS. SRI.T.K.RADHAKRISHNAN
SRI.T.B.GAFOOR**

**THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION
ON 25-09-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

Msd.

P.B.SURESH KUMAR, J.

= = = = =

R.S.A.No.1482 of 2012

= = = = =

Dated this the 25th day of September, 2015.

J U D G M E N T

The plaintiffs in a suit for injunction are the appellants in this Second Appeal.

2. The plaint schedule property was purchased by the predecessor of the plaintiffs Xavier as per Ext.A1 sale deed. There are two buildings in the plaint schedule property bearing Nos.8/98 and 8/98A. According to the plaintiffs, the defendant who is none other than the sister of Xavier is asserting rights over 10 cents out of the plaint schedule property and the building bearing No.8/98 on the strength of Ext.B2 settlement deed executed by her father Kithappan. According to the plaintiffs, Ext.B2 does not confer any right on the defendant as Kithappan had no interest in the property. It is asserted by the plaintiffs that they are in absolute possession of the entire plaint schedule property and the two buildings therein. The defendant contested the suit contending that her father Kithappan was a kudikidappukaran in the property and that the building bearing

No.8/98 was put up by him. According to her, the kudikidappu right of Kithappan was assigned by him in her favour as per Ext.B2 settlement deed and she is in possession of the property and the building covered by Ext.B2 settlement deed.

3. The trial court found on facts that the defendant is in possession of the property covered by Ext.B2 settlement deed and that therefore the plaintiffs are not entitled to the decree of injunction sought in the suit. The appellate court, on a reappraisal of the evidence on record, confirmed the decision of the trial court. The plaintiffs are aggrieved by the concurrent decisions of the courts below.

4. Heard the learned counsel for the appellants and the learned counsel for the respondent.

5. As noticed above, the suit is one for injunction. In a suit for injunction what is to be seen by the court is as to whether the plaintiff is in possession of the suit property. The issue relating to possession is a pure question of fact. In the instant case, both the courts below have concurrently found that the plaintiffs are not in exclusive possession of the entire plaint schedule property. The plaintiffs are challenging the said finding of fact in this Second Appeal. According to me, the plaintiffs are

not entitled to invoke the jurisdiction of this Court under Section 100 of the Code of Civil Procedure to challenge the findings on a pure question of fact.

6. That apart, a close reading of the impugned judgments indicate that the findings arrived at by the courts below that the plaintiffs have not established possession over the entire plaint schedule property is supported by cogent reasons. As noticed above, the defendant is claiming possession over a portion of suit property on the basis of Ext.B2 settlement deed. Ext.B2 settlement deed is a document executed by the father of the defendant on the strength of his kudikidappu right over the suit property. PW2, the wife of Kithappan, has deposed that the building bearing No.8/98 was one constructed by Kithappan and she was residing with him in the said building with their children. The courts below noticed that the kudikidappu right of the father of the defendant over the suit property is referred to in the title deed of the vendor of the predecessor of the plaintiff. Further, the courts below also found based on Ext.B3 ration card and Ext.B4 series assessment records relating to the building bearing No.8/98 for the period from 1985 to 1990 that Kithappan was residing in the said building with his family. The courts below also

noticed that the building bearing No.8/98 was never assessed in the name of Xavier. It is based on the aforesaid materials, the courts below came to the conclusion that the plaintiffs have not established possession over the entire plaint schedule property. There is, therefore, no question of law, much less any substantial question of law, involved in the Second Appeal and the same is, accordingly dismissed in limine. However, it is made clear that the dismissal of this appeal does not preclude the plaintiffs from instituting a fresh suit against the defendant on the strength of their title. All the interlocutory applications in the appeal are closed.

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

kvs

// true copy //

PA TO JUDGE.