

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

WEDNESDAY, THE 10TH DAY OF JUNE 2015/20TH JYAISHTA, 1937

RSA.No. 40 of 2013 ()

**AGAINST THE JUDGMENT AND DECREE IN AS 61/2008 of PRL.SUB COURT,
THALASSERY DATED 22-11-2011.**

**AGAINST THE JUDGMENT AND DECREE IN OS 507/2006 of PRL.MUNSIFF COURT,
KANNUR DATED 28-09-2007.**

APPELLANT/APPELLANT/PLAINTIFF :

**THE CANNANORE DISTRICT BADMINTON (SHUTTLE ASSOCIATION)
KANNUR, REPRESENTED BY ITS HONORARY SECRETARY
V.RAGHUTHAMAN S/O.KUNHAMBU, 61 YEARS,
INDOOR COURT, NEAR ASHIRAWAD HOSPITAL,
THAVAKKARA, KANNUR .**

BY ADV. SRI.P.M.PAREETH.

RESPONDENT/RESPONDENT/RESPONDENT :

- 1. K.RAJESH, AGED 37 YEARS,
S/O.KRISHNAN K RESIDING AT
'SAIKRIPA ', CHIRAKKAL PO, KANNUR 670 011.**
- 2. P.KL.JAGANATHAN, AGED 54 YEARS,
FATHER'S NAME NOT KNOWN,
HEAD OF THE DEPARTMENT OF PHYSICAL EDUCATION,
S.N.COLLEGE, THOTTADA, KANNUR DISTRICT - 670 011.**

R1 BY ADV. SRI.ZAKEER HUSSAIN.

**THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON
10-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

amk

A.HARIPRASAD, J.

R.S.A No.40 of 2013

Dated this the 10th day of June, 2015.

J U D G M E N T

Heard the learned counsel for the appellant. This regular second appeal comes up for admission with following facts :

Plaintiff is an Association registered under the Travancore Cochin Literary Scientific and Charitable Societies Act, 1955. The association is affiliated to Kerala Badminton (Shuttle) Association. The objectives of the association have been narrated in the plaint. According to the averments in the plaint, office bearers of the association would be elected in the annual general body meeting. Tenure of the office bearers is four years. It appears that there was previous litigations between the association and some members of the association. According to the averments in the plaint, the indoor stadium shown in the plaint schedule belongs to the association and the plaintiff association used to conduct tournaments therein. It is alleged that the defendants and their men have no right over the plaint

schedule stadium.

2. The defendants filed a written statement raising a contention that the suit is not maintainable and that the Kerala Badminton (Shuttle) Association is a registered association having its own memorandum of association, bye laws, rules, regulations etc. The said association is not one registered under the provisions of the Societies Registration Act. This association is paying affiliation fee every year to the Kerala Badminton (Shuttle) Association. The case of the defendants is that the plaintiff trespassed into the plaint schedule property and reduced it into their possession. The defendants are not claiming any right over the indoor stadium. The plaintiff is not entitled to get any relief.

3. At the time of trial, both parties adduced evidence and produced lot of documents. On the basis of the evidence adduced, the trial court found that the defendants are office bearers of Kannur Badminton (Shuttle) Association, a totally

different entity. The trial court also noticed that the defendants have no case that they are acting as office bearers of the plaintiff association. Court below also noticed that Kannur Badminton (Shuttle) Association has not made a party to the suit. Considering all these facts, the court below found that the suit claim is not allowable.

4. The plaintiff took up the matter in appeal. The lower appellate court found that the plaint schedule stadium is in the possession of the plaintiff (appellant herein). The lower appellate court also took note of the submissions made on behalf of the defendants that they have no intention to trespass into the plaint schedule stadium. That apart, respondents 1 and 2 (defendants) filed a written undertaking before the lower appellate court to the effect that they never attempted to trespass into the plaint schedule building and they have no such intention. Therefore, the appeal was disposed by lower appellate court accordingly.

5. After hearing the learned counsel for the appellant and on perusal of the impugned judgments, I find no substantial question of law arising in this appeal. However, it is made clear that the plaintiff, on the basis of the pleadings in this case, may approach the appropriate court, if there is any threat caused by anyone in respect of their rights claimed over the plaint schedule property. With these observations, the regular second appeal is dismissed.

All pending interlocutory applications will stand dismissed.

amk

**Sd/-
A.HARIPRASAD,
JUDGE.**

//True copy//

P.A to Judge