

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

TUESDAY, THE 22ND DAY OF DECEMBER 2015/1ST POUSHA, 1937

RSA.No. 329 of 2011 ()

**AGAINST THE JUDGMENT IN AS. NO.166/2003 OF ADDL. DISTRICT COURT
(ADHOC-I), KASARAGOD DATED 04-12-2010.
AGAINST THE JUDGMENT IN OS. NO.43/1998 OF PRINCIPAL MUNSIF COURT,
KASARAGOD DATED 30-06-2000.**

APPELLANT/APPELLANT/PLAINTIFF:

**G. VENKATESHWARA BHAT, S/O. VISHNU BHAT,
THAMBU RAM NIVAS, KUMBADAJE VILLAGE,
KASARAGOD TALUK, P.O. YETHADKA.**

**BY SRI.V.VASOKAN, SENIOR ADVOCATE.
ADVS. SRI.K.S.SAJEEV KUMAR,
SMT.RUKHIYABI MOHD KUNHI.**

RESPONDENTS/RESPONDENTS/DEFENDANTS:

- 1. G. GANAPATHI BHAT, S/O. VISHNU BHAT,
GOVINDAKUDLU, KUMBADAJE VILLAGE,
KASARAGOD TALUK, P.O. YETHADKA-671 551.**
- 2. G. VISHNU BHAT, S/O.VISHNU BHAT,
GOVINDAKUDLU, KUMBADAJE VILLAGE,
KASARAGOD TALUK, P.O. YETHADKA-671 551.**
- 3. G. PURUSHOTHAMA BHAT, S/O. VISHNU BHAT,
GOVINDAKUDLU, KUMBADAJE VILLAGE,
KASARAGOD TALUK, P.O. YETHADKA-671 551.**
- 4. G. RAMAKRISHNA SHARMA, S/O. VISHNU BHAT,
GOVINDAKUDLU, KUMBADAJE VILLAGE,
KASARAGOD TALUK, P.O. YETHADKA-671 551.**

**THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION
ON 22-12-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

rs.

P.B.SURESH KUMAR, J.

R.S.A.No.329 of 2011

Dated this the 22nd day of December, 2015

JUDGMENT

The plaintiff in a suit for injunction, both mandatory and perpetual, is the appellant in this second appeal.

2. The plaint A schedule property belongs to the plaintiff as obtained by him as per the terms of the final decree in a suit for partition. According to the plaintiff, as per the terms of the final decree referred to above, the plaintiff is entitled to draw water from the tank 'T' shown in the sketch appended to the final decree to irrigate the plaint A schedule property once in 7 days. It is also the case of the plaintiff that the defendants have removed the pipe lines drawn for irrigating the plaint A schedule property and

the sprinklers fixed in the pipelines. The defendants contested the suit contending inter alia that the plaintiff has no right to draw water from the tank as claimed in the plaint. They also disputed the case of the plaintiff that they have removed the pipelines and sprinklers. The trial court accepted the case of the plaintiff that he has the right to draw water from the tank referred to above once in 7 days for irrigating the plaint A schedule property. Consequently, the suit was decreed in part restraining the defendants from causing obstruction to the plaintiff from drawing water as claimed by him. The prayer for mandatory injunction directing the defendants to restore the pipeline and the sprinklers was however declined by the court holding that the plaintiff has not established that the defendants have removed the pipelines and the sprinklers. In so far as the relief of mandatory injunction claimed by the plaintiff was declined, the plaintiff was permitted to install new pipelines

at his expenses. Aggrieved by the decision of the trial court, the plaintiff took up the matter in appeal. The appellate court on a re-appraisal of the evidence on record confirmed the decision of the trial court. The plaintiff who is aggrieved by the concurrent decisions against him has thus come up in the second appeal.

3. Heard the learned counsel for the appellant.

4. In the light of the findings rendered by the courts below, the only point arises for consideration is as to whether the courts below were justified in declining the decree for mandatory injunction sought by the plaintiff. As noted above, the specific case of the plaintiff is that the pipelines drawn by him and the sprinklers fixed therein for irrigating the plaint A schedule property have been removed by the defendants. The courts below concurrently found that the plaintiff has not established the said case set up by him in the suit. It is beyond dispute that without establishing the

said case, the plaintiff is not entitled to the mandatory injunction claimed in the suit. The question whether the plaintiff has established the removal of the pipelines and sprinklers by the defendants being a pure question of fact, the decisions rendered on the said question by the courts below cannot be challenged in a second appeal filed under Section 100 of the Code of Civil Procedure.

In the said view of the matter, there is absolutely no merit in the second appeal and the same is, accordingly, dismissed.

P.B.SURESH KUMAR, JUDGE.

smm