

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

TUESDAY, THE 13TH DAY OF OCTOBER 2015/21ST ASWINA, 1937

RSA.No. 504 of 2011

**AS 370/2006 OF II ADDITIONAL DISTRICT COURT, ERNAKULAM
OS 607/2004 OF PRINCIPAL MUNSIF'S COURT, ERNAKULAM**

APPELLANT(S) APPELLANT/PLAINTIFF:

**LUCY GEORGE, AGED 76, W/O. GEORGE,
PADAPURACKAL, KALOOR DESOM, ERNAKULAM DISTRICT.**

**BY ADVS. SRI.P.N.RAMAKRISHNAN NAIR
SRI.P.VISWANATHAN**

RESPONDENT(S)/RESPONDENTS/DEFENDANTS:

- 1. JAYARAJ, AGED 49, S/O. LATE CHANDRASEKHARAN,
KONNATHU PARAMBU, MULAVUKAD P.O.,
ERNAKULAM DISTRICT-682012.**
- 2. JAYAKUMAR, AGED 47, S/O. CHANDRASEKHARAN,
KONNATHU PARAMBU, MULAVUKAD P.O.,
ERNAKULAM DISTRICT-682012.**
- 3. JAYANTHI DIVAKARAN, KANNOTH, AGED 46,
D/O. CHANDRASEKHARAN, H.NO.338, WARD NO.61,
NEAR JEEVANLA'S HOUSE, RIGHT SIDE OF POJIKKARA NORTH,
PONNARIMANGALAM, MULAVUKAD-68012.**
- 4. JAYASHREE SATHYAN, AGED 43, D/O. CHANDRASEKHARAN,
VELUTHA MANAYIL, PONOTH ROAD, KALOR, KOCHI-17.**
- 5. JEEVAN LAL, AGED 43, S/O. CHANDRASEKHARAN,
H.NO.339, KANNOTHU VEEDU, HOTEL AND TEA SHOP, RIGHT SIDE OF
PONJIKKARA, MULAVUKAD-682012.**

**THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON
13-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

PJ

P.B.SURESH KUMAR, J.

R.S.A.No.504 of 2011

Dated this the 13th day of October, 2015

JUDGMENT

The plaintiff in a suit for injunction is the appellant.

2. The case of the plaintiff is that the plaint schedule property and the two buildings therein were let out to the plaintiff by the predecessor of the defendants as per the terms of an agreement dated 19.3.1990; that the plaintiff was running a cinema theatre in one building and residing in the other building in the plaint schedule property; that the defendants have set fire to the cinema theatre and the building in the plaint schedule property on 14.4.1998; that she is entitled to reconstruct the cinema theatre since the lease is not terminated and that the

defendants are causing obstructions to the plaintiff in the matter of reconstructing the cinema theatre. The relief claimed in the suit was a decree of prohibitory injunction restraining the defendants from making any obstructions to the reconstruction of the cinema theatre by the plaintiff as also evicting the plaintiff from the plaint schedule property otherwise than by due process of law. The defendants contested the suit, contending among others, that the plaintiff has no right whatsoever in the plaint schedule property. The trial court accepted the case of the defendants and dismissed the suit. The plaintiff has taken up the matter in appeal. The appellate court, on a reappraisal of the evidence on record, confirmed the decision of the trial court. The plaintiff who is aggrieved by the concurrent decisions against her has thus come up in this second appeal.

3. Heard the learned counsel for the appellant.

4. As noticed above, the suit property is owned by the defendants. The case of the plaintiff is only that the plaint schedule property and the buildings existed therein were leased out to her by the predecessor of the defendants. The fact that the buildings in the plaint schedule property were destroyed by fire on 14.4.1998 is not in dispute. The appellate court noticed that Ext.A1 lease does not confer any authority on the plaintiff to reconstruct the buildings in the plaint schedule property. There was an earlier suit by the plaintiff against the defendants as O.S.No.911 of 1997. The relief sought in the said suit was a decree of prohibitory injunction restraining the defendants from obstructing the plaintiff from running the cinema theatre in the plaint schedule property. It was during the pendency of the said suit, the cinema theatre was destroyed by fire. After the fire, the plaintiff filed a memo in O.S.No.911 of 1997 stating that she is surrendering the

plaint schedule property to the defendants. O.S.No.911 of 1997 was dismissed in the light of the memo filed by the plaintiff. The appellate court took the view that since the plaintiff had surrendered the plaint schedule property to the defendants as informed to the court in O.S.No.911 of 1997, the lease arrangement is terminated and the plaintiff has no more rights in the property also, thereafter. It is in the said circumstances, the courts below non-suited the plaintiff.

In the aforesaid facts and circumstances, the courts below cannot be faulted for having arrived at the impugned decisions. The second appeal is therefore without merits and the same is accordingly dismissed.

P.B.SURESH KUMAR, JUDGE.

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