

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

TUESDAY, THE 24TH DAY OF NOVEMBER 2015/3RD AGRAHAYANA, 1937

RSA.No. 404 of 2013 ()

**AGAINST THE JUDGMENT IN AS. NO.88/2010 OF I ADDL. DISTRICT COURT,
ERNAKULAM DATED 09-10-2012.**

**AGAINST THE JUDGMENT IN OS. NO.998/2008 OF II ADDL. SUB COURT,
ERNAKULAM DATED 16-12-2009.**
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APPELLANT/APPELLANT/PLAINTIFF:

**ANNIE IGNATIUS, W/O.IGNATIUS LUKOSE,
AGED 63, CC 35/2076, ANNIETHOTTAM,
SOUTH PIPELINE ROAD, PALARIVATTOM P.O.,
COCHIN-682 025.**

**BY ADVS.SRI.K.C.CHARLES,
SRI.M.POLY MATHAI,
SRI.VIMAL K.CHARLES,
SMT.A.T.RENJU.**

RESPONDENTS/RESPONDENTS/DEFENDANTS:

- 1. CORPORATION OF COCHIN,
PARK AVENUE, ERNAKULAM,
REPRESENTED BY ITS SECRETARY, PIN-682 011.**
- 2. C.K. PETER, AGED 50, COUNCILOR,
DIVISION NO 56, CHIRAMMEL HOUSE,
THEVARA P.O., COCHIN-682 013.**

**THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION
ON 24-11-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

rs.

P.B.SURESH KUMAR, J.

R.S.A.No.404 of 2013

Dated this the 24th day of November, 2015

JUDGMENT

The plaintiff in a suit for injunction is the appellant in the second appeal.

2. The trial court dismissed the suit on the ground that the plaintiff has not established the identity of the plaint schedule property. The plaintiff challenged the decision of the trial court in appeal. After the institution of the appeal, the plaintiff filed a fresh suit as O.S.No.50 of 2011 before the Sub Court, Ernakulam in respect of the same subject matter on the basis of her title. Thereupon, the plaintiff filed I.A.No.3171 of 2012 in the appeal seeking permission to withdraw the earlier suit without prejudice to

her right to pursue the subsequently instituted suit. The said application was dismissed by the appellate court. Thereafter, the appellate court confirmed the decision of the trial court and dismissed the appeal.

3. Heard the learned counsel for the appellant.

4. The learned counsel for the appellant contended that the impugned decision of the appellate court is likely to prejudice the interests of the appellant in the latter suit, as I.A.No.3171 of 2012 filed by her seeking permission to withdraw the earlier suit with liberty to pursue the latter suit was rejected by the appellate court. There is no basis for this apprehension. The earlier suit was a simple suit for injunction and the latter suit, as indicated by the counsel, is a suit on title. Further, the earlier suit was dismissed on the ground that the plaintiff has not established the identity of the suit property. As such, the

decision in the earlier suit cannot affect the prosecution of the latter suit in any manner. The second appeal, in the circumstances, is without merits and the same is, accordingly, dismissed.

P.B.SURESH KUMAR, JUDGE.

smm