

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

THURSDAY, THE 17TH DAY OF SEPTEMBER 2015/26TH BHADRA, 1937

RSA.No. 971 of 2011

**AS 187/2008 DISTRICT COURT, PALAKKAD DATED 28-07-2010
OS 124/2006 OF MUNSIFF COURT, ALATHUR DATED 03-04-2008**

APPELLANTS/APPELLANTS/PLAINTIFFS::

**AHAMMED, AGED 40 YEARS,
S/O.IBRAHIM, R/AT KAVUNGAL HOUSE, TARUR AMSAM,
ATHIPOTTA DESAM, ALATHUR THALUK, PALAKKAD.**

**BY ADVS.SRI.NAGARAJ NARAYANAN
SRI.SAIJO HASSAN
SRI.RAJAN VELLOTH
SRI.BENOJ C AUGUSTIN
SRI.RAFEEL. V.K.
SRI.SEBIN THOMAS**

RESPONDENT(S)/RESPONDENTS/DEFENDANTS:

- 1. THE EXECUTIVE ENGINEER,
MALAMPUZHA DAM IRRIGATION OFFICE, MALAMPUZHA VILLAGE,
PALAKKAD THALUK, PALAKKAD.**
- 2. THE DISTRICT COLLECTOR,
CIVIL STATION, PALAKKAD.**

BY SENIOR GOVERNMENT PLEADER SRI.THOMAS JOHN AMBOOKAN

**THIS REGULAR SECOND APPEAL HAVING BEEN FINALLY HEARD
ON 17-09-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

PJ

P.B.SURESH KUMAR, J.

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R.S.A.No.971 of 2011.

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Dated this the 17th day of September, 2015.

J U D G M E N T

The plaintiff in the suit is the appellant. According to the plaintiff, plaint B schedule property is part of plaint A schedule property belonging to the plaintiff. Plaint B schedule property is described in the plaint as the ridge of the paddy field described as plaint A schedule property. There is a canal on the further west of plaint B schedule property. The canal on the west of plaint B schedule property is described as plaint C schedule. According to the plaintiff, plaint B schedule property is mistakenly recorded in the revenue records as Government puramboke and taking advantage of the said mistake, the defendants who are residing in the locality have removed plaint B schedule ridge to fill plaint C schedule canal. It is also the case of

the plaintiff that they are now attempting to construct a new canal through plaint A schedule property. The plaintiff has therefore claimed in the suit a declaration that plaint B schedule property is part of plaint A schedule property and a mandatory injunction directing the defendants to restore plaint C schedule canal. Though it was alleged that plaint B schedule property is wrongly shown in the revenue records as puramboke land, the State was not made a party to the suit. Instead, the suit was instituted against the District Collector and the Executive Engineer of the Malampuzha Irrigation Project. The defendants filed a written statement contending inter alia that the suit instituted without the State in array of parties is not maintainable. They also contended that plaint B schedule property is a puramboke land. The trial court dismissed the suit and the appellate court, on a reappraisal of the materials on record, confirmed the decision of the trial court. The plaintiff who is aggrieved by the concurrent decisions of the courts below has thus

come up in this second appeal.

2. Despite the specific contention raised by the defendants that plaint B schedule ridge is a puramboke land, over which the plaintiff has no right, the plaintiff has not taken any steps to identify plaint B schedule property and establish that it is part of plaint A schedule property. The only evidence let in by the plaintiff to establish his case is Ext.A8 report of the Advocate Commissioner appointed in an earlier suit between the parties namely O.S.No.39 of 2003. Ext.A8(a) is the survey plan appended to Ext.A8 report of the Commissioner. The courts below noticed that plaint B schedule property in the present suit is not specifically demarcated in Ext.A8(a) survey plan. The courts below also noticed that Ex.A8(a) plan is one prepared based on the old survey records. The courts below further noticed that though it is alleged that there is a mistake in the survey records relating to plaint B schedule property, the plaintiff has not established the said fact. It is in the

aforesaid circumstances, the plaintiff was non-suited. In the facts and circumstances stated above, I do not find any reason to interfere with the decisions of the courts below. There is no question of law, much less any substantial question of law, involved in this Second Appeal and the same is, accordingly, dismissed *in limine*. All the interlocutory applications in the appeal are closed.

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

Kvs/-

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PA TO JUDGE.