

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

MONDAY, THE 5TH DAY OF OCTOBER 2015/13TH ASWINA, 1937

RP.No. 793 of 2015 ()

(AGAINST THE JUDGMENT IN CRP.NO. 630/2010 DATED 25-05-2015)

REVIEW PETITIONER/1ST RESPONDENT :

**POOVAKKOTH SOUDA,
RESIDING AT KEERYEDATHU PARAMBA,
NADUVATTOM AMSOM, KOZHIKODE TALUK,
KOZHIKODE DISTRICT.**

**BY ADVS.SRI.R.SUDHISH
SRI.P.P.BALAN
SMT.M.MANJU**

RESPONDENT(S)/PETITIONER & 2ND RESPONDENT :

- 1. P.K.NALINI, W/O.POOVANTHUMKANDY KARUNAKARAN,
RESIDING AT KARUNA, VALAYANAD AMSOM DESOM,
KOZHIKODE-673 028**
- 2. E.V.NASHEEB, AGED 40 YEARS,
SIGN SPOT ADVERTISERS, 8/204,
NEAR BANK OF INDIA, SILK STREET,
NAGARAM AMSOM DESOM OF KOZHIKODE TALUK,
KOZHIKODE-673 032.**

R1 BY SRI.V.V.SURENDRAN

**THIS REVIEW PETITION HAVING COME UP FOR ADMISSION
ON 29-09-2015 , ALONG WITH RP.NO. 796 OF 2015, THE COURT
ON 05-10-2015 PASSED THE FOLLOWING:**

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A.V.RAMAKRISHNA PILLAI, J.

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R.P Nos.793 & 796 of 2015

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Dated this the 5th day of October, 2015

ORDER

The respondent in the regular second appeal as well as the connected civil revision petition is in review.

2. The respondent in this review petition has filed the regular second appeal challenging the decree and judgment in A.S No.161 of 2008 on the files of the IInd Additional Sub Court, Kozhikode, which in turn arose from the judgment and decree in O.S No.317 of 2007 on the files of the Munsiff's Court, Kozhikode. The respondent was the plaintiff in the original suit for permanent prohibitory as well as mandatory injunction alleging that she acquired the plaint schedule property by a registered jenman deed of 1971. According to her, the property is situated in R.S. Nos.21-19-568, 569, 570, 571, 572, 579 and 580 in Panniyankara village of Kozhikode taluk which is a strip of land bounded on the east by the Calicut Madras Trunk Road (NH-17) and on the west by the railway line.

3. She alleges that her predecessor-in-interest had executed a kaanam deed in favour of one Sundarampalli Pathumabi in the year 1929 and as per the said deed Sundarampalli Pathumabi was given an extent measuring $2 \frac{1}{3} \times 15$ six koles in R.S No.568. She further alleges that the property held by the Sundarampalli Pathumabi pursuant to kaanam deed of 1929 was bounded by the road on the east and the remaining property of the landlord on the west. However, in the description, the boundaries were mistakenly shown as road on the east and railway line on the west, as could be seen from the purchase certificate obtained by the successor-in-interest of the original holder as evidenced Exts.A17 and A18 as well as two earlier suits of the plaintiff against the successor-in-interest of kaanam holder, evidenced by Exts.A3 to A5, A10 and A11.

4. According to her, plaint A schedule property is comprised in Sy.No.568 and the defendant had purchased a portion of the property held by the Sundarampalli Pathumabi from a karaima holder of

Sundarampalli Pathumabi. According to the respondent, she is not having any land over and above the extent held by Sundarampalli Pathumabi. The suit was filed alleging that there was attempt on the part of the petitioner, who was the defendant, to trespass upon the remaining portion of the plaint A schedule property.

5. According to the petitioner, there is an error apparent on the face of record in the judgment of this Court in the regular second appeal. This Court while dealing with the regular second appeal held that the case putforward by the appellant is true. However, according to the petitioner, this Court has not adverted to the fact of existence of B schedule property, a part of which is owned by the revision petitioner/defendant and the reference is only with respect to A schedule property which admittedly forms part thereof. This, according to the petitioner, has resulted in not considering the materials focusing the identity of the property.

6. It is crucial to note that the lower appellate court though

dismissed the appeal, reversed the finding of the trial court that the petitioner/defendant is having title to the property bounded on the east and railway line on the west as its boundaries. Having found so, the lower appellate court refused to grant a decree in favour of the plaintiff. As essentially the issue related to the identity of the property, the lower appellate court ought to have considered Ext.C3 commissioner's report in its entirety. The appellant was granted a decree by this Court as the lower appellate court failed to properly appreciate Exts.A7 and A8 reports of the Advocate Commissioner in O.S No.562 of 1987 and Exts.A11 and A12 reports in O.S No.113 of 1974 which would go to show that the eastern boundary of the property held by Sundarampalli Pathumabi is a road.

7. Though the learned counsel for the petitioner strenuously made an attempt to establish that the above finding is erroneous, this Court is of the definite view that it cannot be made in a subject matter of review like this.

8. However, this Court finds a clerical mistake in the decretal portion of the judgment impugned. The suit number is wrongly stated as O.S No.113 of 1974 instead of O.S No.317 of 2007. In that respect, the impugned judgment requires a correction.

In the result, the review petitions are closed correcting the original suit number in the decretal portion of the judgment as O.S No.317 of 2007 instead of O.S No.113 of 1974.

sd/-

A.V.RAMAKRISHNA PILLAI
JUDGE

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