

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

TUESDAY, THE 27TH DAY OF OCTOBER 2015/5TH KARTHIKA, 1937

RSA.No. 1042 of 2013 (G)

**(AGAINST THE JUDGMENT AND DECREE IN AS.NO. 117/2011 OF DISTRICT COURT,
THODUPUZHA DATED 7/7/2012)**

**(AGAINST THE JUDGMENT IN OS.NO. 5/2009 OF MUNSIF COURT,
THODUPUZHA DATED 23/2/2011)**

APPELLANT(S)/APPELLANTS/DEFENDANTS 1 AND 2:

1. AMMINI @ ROSAMMA, D/O.MATHAI, AGED 55 YEARS,
PULLOLIKAL VEEDU, ELAMDESOM KARA,
ALAKODE VILLAGE, NOW RESIDING AT ALAKAL VEEDU,
ELAMDESOM KARA, KALAYANTHANIBHAGOM,
ALAKODE VILLAGE, THODUPUZHA TALUK.
2. KOCHUKUNJU, AGED 67 YEARS,
S/O.PAMCHA, ALAKAL VEEDU, ELAMDESOM KARA,
KALAYANTHANIBHAGOM, ALAKODE VILLAGE,
THODUPUZHA TALUK.

BY ADV. SRI.G.SREEKUMAR (CHELUR)

RESPONDENTS/RESPONDENTS/ADDL.2ND PLAINTIFF AND 3RD DEFENDANT.:

1. NARAYANAN, S/O.KESAVAN, AGED 60 YEARS,
VADAKKUMMANAL (CHERUMANDAPATHI) VEEDU,
KALAYANTHANI KARA, ALAKODE VILLAGE,
THODUPUZHA TALUK, PIN- 685 558.
2. MAYA, D/O.SIVAN,AGED 32 YEARS,
KOLLAMPARAMBIL VEEDU, ELAMDESOM KARA,
ALAKODE VILLAGE, NOW RESIDING AT ALAKAL VEEDU,
ELAMDESOM KARA, KALAYANTHANIBHAGOM,
ALAKODE VILLAGE, THODUPUZHA TALUK, PIN -685 558.

**R1 BY ADVS. SRI.A.X.VARGHESE
SRI.A.V.JOJO**

**THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION
ON 27-10-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

sts

P.B.SURESH KUMAR, J.

R.S.A.No.1042 of 2013

Dated this the 27th day of October, 2015

JUDGMENT

The defendants in a suit for fixation of boundary are challenging in this Second Appeal the concurrent decisions against them in the suit.

2. The plaint A schedule property measuring 82.5 cents covered by Exts.A1 and A2 pattas belonged to the first plaintiff. On his death, the property devolved on the second plaintiff. According to the plaintiffs, plaint A schedule property is part of a larger extent of 1.36 acres obtained by the first plaintiff as per Exts.A1 and A2 pattas and out of the said large extent, 1.5 cents covered by Ext.A2

patta was given to the first defendant based on an agreement for sale and 52 cents was sold to third parties. The case set up in the plaint is that the defendants, who are in possession of 1.5 cents of property given by the first plaintiff to the first defendant as per the terms of the agreement for sale dated 6.2.1999, are attempting to trespass into the remaining property of the plaintiffs, viz.; plaint A schedule property. The property given to the first defendant as per the terms of the agreement for sale dated 6.2.1999 is shown in the plaint as plaint B schedule. The plaintiffs have, therefore, claimed a decree for fixation of the boundaries of the property covered by Exts.A1 and A2 pattas excluding the 1.5 cents of property given to the first defendant and 52 cents sold to third parties. The defendants contested the suit. According to them, plaint B schedule property is not the property given to the first defendant as per the terms of the agreement for sale dated 6.2.1999.

According to them, the 1.5 cents of property given to the first defendant is a portion of the property covered by Ext.A1 patta and what is shown as B schedule is a portion of the property covered by Ext.A2 patta.

3. In the course of the trial, an Advocate Commissioner was appointed. The Commissioner identified the property covered by the agreement for sale dated 6.2.1999 and shown in the plan appended to the report. The identification of the 1.5 cents of property by the Advocate Commissioner as per his report and plan has not been objected by the defendants. The courts below, in the circumstances, accepted the report and plan submitted by the Advocate Commissioner and decreed the suit as prayed for in accordance with Ext.C2(a) survey plan. The defendants, though challenged the decision of the trial court in appeal, the appellate court confirmed the decision of the trial court. As indicated above, the defendants who are

aggrieved by the concurrent decisions against them have thus come up in this second appeal.

4. Heard the learned counsel for the appellants as also the learned counsel for the first respondent.

5. The learned counsel for the appellants contended that the identification of the 1.5 cents of property, obtained by the first defendant as per the terms of the agreement for sale dated 6.2.1999, by the Advocate Commissioner is incorrect. According to the learned counsel, in the circumstances, the only prayer made when the appeal was taken up for hearing before the lower appellate court was for a remand. As noticed above, the Advocate Commissioner who was appointed in the suit has identified the property covered by Ext.A3 agreement for sale and shown in the plan prepared with the aid of the Surveyor. The appellants did not file any objection to the report and plan submitted by the Advocate Commissioner.

The plan prepared by the Advocate Commissioner which is appended to the decree passed by the trial court indicates that a house is also situated in the 1.5 cents of property located by the Advocate Commissioner. The learned counsel for the appellants does not dispute the fact that the house located by the Advocate Commissioner in the 1.5 cents of property is the house of the first defendant. According to the learned counsel, the 1.5 cents of property and house located by the Advocate Commissioner and shown in Ext.C2(a) plan is part of the puramboke which is in their possession and not part of the properties covered by Exts.A1 and A2 pattas. There is nothing on record to indicate that such a contention was ever raised by the appellants before the courts below.

In the said circumstances, I do not find any reason to interfere with the impugned decisions of the courts below. There is no question of law, much less any

substantial question of law involved in the second appeal and the same is accordingly dismissed.

P.B.SURESH KUMAR, JUDGE.

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