

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

FRIDAY, THE 20TH DAY OF NOVEMBER 2015/29TH KARTHIKA, 1937

RSA.No. 1431 of 2013 ()

**(AGAINST THE JUDGMENT IN AS.NO. 14/2010 OF SUB COURT, KATTAPPANA
DATED 15-07-2013)**

**(AGAINST THE JUDGMENT IN OS.NO. 81/1996 OF MUNSIFF COURT, IDUKKI
DATED 25-09-2008)**

APPELLANT/APPELLANT/PLAINTIFF:

**NAIGO,
S/O.PADMANABHAN, AGED 41 YEARS,
PALLITHARA HOUSE,
MUTHIYURANDAYAR KARA, KULAMAVU,
IDUKKI VILLAGE.**

**BY ADVS.SRI.T.I.ABDUL SALAM
SRI.PHILIP T.VARGHESE**

RESPONDENTS/RESPONDENTS/DEFENDANTS:

- 1. STATE OF KERALA,
REPRESENTED BY DISTRICT COLLECTOR,
IDUKKI. PIN-685 603**
- 2. FOREST RANGE OFFICER,
THODUPUZHA FOREST RANGE,
KARIKODU, THODUPUZHA. PIN-686 610**

R1 & R2 BY SPL. GOVT PLEADER (FOREST) SRI.M.P.MADHAVANKUTTY

**THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION
ON 20-11-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

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P.B.SURESH KUMAR, J.

R.S.A.No.1431 of 2013

Dated this the 20th day of November, 2015

JUDGMENT

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

2. The suit property measuring 2 acres and 95 cents is a forest land. According to the plaintiff, the suit property was in the possession of one Sasi Pallithara; that he transferred the same to one Uthaman and that Uthaman in turn had transferred 2 acres out of the said property to the plaintiff on 15.11.1993. It is also the case of the plaintiff that thereafter, he had applied for, and obtained assignment in respect of the said 2 acres of property as per the Kerala Land Assignment (Regularization of Occupations of Forest

Lands prior to 1.1.1977) Special Rules 1993. Ext.A1 is the order of assignment in favour of the plaintiff. It is the further case of the plaintiff that immediately proceeding the order of assignment, he got possession of the remaining land held by Uthaman also as per Ext.A2 document. According to the plaintiff, in the circumstances, he is in possession of the entire suit property and the forest officials are attempting to dispossess him from the suit property. The relief claimed in the suit, in the circumstances, was a decree of prohibitory injunction restraining the forest officials from dispossessing the plaintiff from the suit properties. The defendants resisted the suit. According to them, the plaintiff is not in possession of the suit property. They also contended that Ext.A2 is a concocted document created for the purpose of filing the suit. The trial court found that the plaintiff has obtained Ext.A1 order of assignment in respect of 1 acre 95 cents and 200 sq.links

out of the suit properties and therefore, the plaintiff has title over the same. As regards the remaining property, the trial court found that the plaintiff has not established title or possession over the same and consequently, decreed the suit in part. The operative portion of the judgment reads thus.

"The defendants are restrained by way of permanent prohibitory injunction from trespassing upon 1 acre 95 cents 200 square links of land that is plot No.1 of Ext.X1 survey plan and from destroying the improvements there in or doing any act that will affect peaceful possession of the said property by the plaintiff. There will be no orders as to cost. Ext.X1 shall be appended to the decree."

The plaintiff took up the matter in appeal. The appellate court, on a re-appraisal of the evidence on record, confirmed the decision of the trial court. The plaintiff who is aggrieved by the concurrent decisions against him has thus come up in this second appeal.

3. Heard the learned counsel for the appellant as also

the learned Government Pleader for the respondents.

4. The learned counsel for the appellant argued the second appeal as if he was arguing the original suit. The essence of the contentions raised by the learned counsel was that the predecessor of the plaintiff has been in possession of 3 acres of land and that therefore it has to be presumed that the plaintiff has obtained the entire land held by his predecessor. He relied on Ext.B2 joined verification report to substantiate his contention that his predecessor Sasi Pallathara was holding 3 acres of forest land. In the light of the decision of the trial court, the only issue arises for consideration is as to whether the plaintiff has established possession over the property covered by Ext.A2 document. Ext.A2 recites that the remaining property held by Uthaman as obtained by him from Sasi Pallithara has been transferred to the plaintiff. Ext.A2 being an unregistered document, the same cannot be accepted to

hold possession over the suit property. Other than Ext.A2, the plaintiff has with him only Exts.A3 and A4 to substantiate his case. Ext.A3 is the building tax assessment made by the local Grama Panchayath in respect of a building in the property and Ext.A4 is a certificate issued by the Panchayath to the effect that the building of the plaintiff has been assessed to property tax. The fact that the building referred to in Ext.A3 is situated in the suit property is not in dispute. But there is nothing on record to indicate that the building referred to in Exts.A3 and A4 is situated in the property covered by Ext.A2. In the said circumstances, it cannot be said that the conclusion arrived at by the courts below that the plaintiff has not established possession over the property covered by Ext.A2 is incorrect or faulty in any manner.

In the said view of the matter, there is no merit in the second appeal and the same is accordingly dismissed in

limine. All the interlocutory applications in the appeal are closed.

P.B.SURESH KUMAR, JUDGE.

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