

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

FRIDAY, THE 25TH DAY OF SEPTEMBER 2015/3RD ASWINA, 1937

RSA.No. 52 of 2015 ()

(AGAINST THE JUDGMENT AND DECREE IN AS.NO. 103/2012 OF III ADDL.DISTRICT COURT, THODUPUZHA)

OS.NO. 327/2006 OF MUNSIFF'S COURT, THODUPUZHA

APPELLANT/APPELLANT/DEFENDANT NO.1:

**RELEEFA FIROZ, AGED 52 YEARS,
W/O.LATE FIROZ KHAN, ANTHINATTU HOUSE,
OLAMATTOM KARA, THODUPUZHA.**

BY ADV. SRI.UNNIKRISHNAN.V.ALAPATT

RESPONDENT(S)/RESPONDENTS/PLAINTIFF AND DEFENDANTS NO.3:

- 1. A.H.JABBAR, S/O.HAMEED,AGED 72 YEARS,
ANTHINATTU HOUSE, BALUSSERI,
KOZHIKODE - 673 612.**
- 2. THE CATHOLIC SYRIAN BANK,
REP. BY ITS BRANCH MANAGER, THODUPUZHA -685 584.**
- 3. REFINI NAZAR, D/O.LATE FIROZ KHAN,AGED 25 YEARS,
ANTHINATTU HOUSE, OLAMATTOM KARA,
THODUPUZHA VILLAGE - 685 584.**
- 4. TIFFANY NASEEM, D/O.LATE FIROZ KHAN, AGED 23 YEARS,
RESIDING -DO-**
- 5. FAHAD BIN FIROZ,
S/O.LATE FIROZ KHAN, AGED 20 YEARS,
RESIDING -DO-**

**THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION
ON 25-09-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

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P.B.SURESH KUMAR, J.

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R.S.A.No.52 of 2015

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Dated this the 25th day of September, 2015.

J U D G M E N T

The first defendant in a suit for fixation of boundary and injunction is the appellant in this Second Appeal.

2. The plaintiff is the brother of the second defendant and the first defendant is the wife of the second defendant. The case of the plaintiff is that the plaint schedule property was obtained by him by virtue of Ext.A1 sale deed. The first defendant owns an item of property on the south of the plaint schedule property. According to the plaintiff, the plaint schedule property has well demarcated boundaries and that defendants 1 and 2 are attempting to trespass into a portion of the plaint schedule property. Defendants 1 and 2 filed a written statement contending that the plaint schedule description of the property is not correct. According to them, a portion of the property owned by the first defendant is also included in the plaint schedule description. They also contended that there is no boundary separating the property of the plaintiff and the property of the first

defendant. The trial court decreed the suit fixing the southern boundary of the plaint schedule property. A prohibitory injunction was also granted to the plaintiff as prayed for by him. The appellate court confirmed the decision of the trial court. Hence this appeal.

3. Heard the learned counsel for the appellant.

4. The Advocate Commissioner appointed in the suit measured the property covered by Ext.A1 sale deed and fixed its boundaries. The boundaries of the property are shown by the Advocate Commissioner in Ext.C2(a) plan. The appellate court found that Ext.C2(a) plan tallies with the plaint schedule description. The said finding of the appellate court is not seen challenged in this appeal. The appellate court also found that the defendants have not adduced any evidence to establish that they have any right over the plaint schedule property. It is seen that the defendants remained exparte in the suit and consequently an exparte decree was granted to the plaintiff. However, later, the said decree was set aside and the defendants were given an opportunity to contest the matter. Despite the said opportunity, the defendants have not adduced any evidence in support of their case. In the said circumstances, I do not find any reason to

interfere with the decisions of the courts below.

5. The learned counsel for the appellant contended that the courts below have not considered the plea of adverse possession raised by defendants 1 and 2 in the suit. The written statement filed by the said defendants does not indicate that they admit the title of the plaintiff over the plaint schedule property. If that be so, there is no basis for the plea of adverse possession. There is no question of law, much less any substantial question of law, involved in the 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.