

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

WEDNESDAY, THE 21ST DAY OF JANUARY 2015/1ST MAGHA, 1936

RSA.No. 64 of 2015 ()

**AGAINST THE JUDGMENT AND DECREE IN AS 26/2009 of SUB COURT, CHENGANNUR
DATED 31-07-2014.**

**AGAINST THE JUDGMENT AND DECREE IN OS 159/2007 of MUNSIFF'S COURT,
CHENGANNUR DATED 27-02-2009.**

APPELLANT(S)/IST RESPONDENT/IST DEFENDANT :

**BALAKRISHNA KURUP, AGED 62 YEARS,
S/O. KRISHNAN NAIR, MULAVANA VEEDU, KUTTAMPEROOR,
MANNAR, CHENGANNUR TALUK PIN - 689 622.**

BY ADV. SRI.N.ASHOK KUMAR.

**RESPONDENT(S)/APPELLANT & RESPONDENT 2 AND 3/
PLAINTIFF & DEFENDANTS 2 AND 3:**

- 1. BALAKRISHNAN NAIR, AGED 82 YEARS,
S/O. KRISHNAN NAIR, RAVI MANDIRAM, KUTTAMPEROOR,
MANNAR, CHENGANNUR TALUK- 689 622.**
- 2. KRISHNA KUMAR, AGED 54 YEARS,
S/O. DAMODARAN NAIR, MULAVANA VEEDU, KUTTAMPEROOR,
MANNAR, CHENGANNUR TALUK- 689 622.**
- 3. GIRISH, AGED 38 YEARS,
S/O. SADANANDAN, MULAVANA VEEDU, KUTTAMPEROOR,
MANNAR, CHENGANNUR TALUK- 689 622.**

**THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON
21-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

amk

A.HARIPRASAD, J.

R.S.A No.64 of 2015

Dated this the 21st day of January, 2015.

J U D G M E N T

This second appeal is directed against the judgment and decree in A.S No.26/2009 on the file of the Sub Court, Chengannur. Learned Sub Judge reversed the decree of dismissal of O.S No.159/2007 before the learned Munsiff's Court, Chengannur and decreed the suit. The suit was one for permanent prohibitory injunction. The plaintiff contended that the plaint schedule property belongings to him and he is in exclusive possession. It is the contention in the plaint that the defendants tried to trespass into the property and to construct a road through the property. The first defendant is the appellant herein. The appellant in turn contended that he has a right of way through the eastern side of the plaint schedule property and that portion of the property over which he claims a right of way does not belong to the plaintiff. It is an admitted case that there is a Panchayat road on the southern side of the plaint schedule

property from where the disputed pathway originates.

2. The court below after re-appreciating the evidence found that the plaintiff has proved possession over the plaint schedule property. For arriving at such a conclusion, the documents especially the Commissioner's sketch and report were relied on by the lower appellate court.

3. Heard the learned counsel for the appellant.

4. Learned counsel for the appellant submitted that the disputed pathway does not belong to the plaintiff. According to him, the property was set apart as a way long before by previous owners and it was not included in the subsequent assignments made. It is an admitted fact that the plaintiff purchased the property from one of the sharers, who is a member of a family to which the entire property belonged at one point of time. Learned counsel further contended that the extent shown in the plaint schedule is excessive. Actually, the plaintiff is only in possession of a lesser extent than what is shown in the plaint.

Still further, it is contended that the defendants and plaintiff are co-owners in respect of the pathway included in the dispute. On a perusal of the written statement, it is seen that no such contention of co-ownership was ever raised. That apart, there is no dispute regarding the identity of the plaint schedule property. On a perusal of the impugned judgment, I am of the view that the court below is right in finding that the plaintiff has established possession in respect of the plaint schedule property. It is trite that in a suit for permanent prohibitory injunction, what is to be determined is only the question of possession of the property on the date of suit. If the appellant has any valid rights to be claimed, it can be agitated in a properly constituted suit. I find no substantial question of law arising in this case. Therefore, the regular second appeal is dismissed.

All pending interlocutory applications will stand dismissed.

amk

Sd/-
A.HARIPRASAD,
JUDGE.
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