

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

MONDAY, THE 8TH DAY OF JUNE 2015/18TH JYAISHTA, 1937

RSA.No. 103 of 2015 ()

AS 212/2010 of III ADDL. DISTRICT COURT, THRISSUR DIVISION
OS 259/2005 of MUNSIF COURT, WADAKKANCHERRY

APPELLANT(S)/APPELLANT/DEFENDANT:

P.K.THOMAS, AGED 69 YEARS
S/O.PAZHUNNANA KOCHAPPAN, BATHEL NIVAS
THRIKKADANGODE AMDOM, DESOM, VANIYAMKULAM VILLAGE
OTTAPALAM TALUK.

BY ADVS.SRI.SAJU.S.A
SMT.MEENA.A.
SRI.K.C.KIRAN
SRI.VINOD RAVINDRANATH

RESPONDENT(S)/RESPONDENT/2ND PLAINTIFF:

ARUMUGHAN SWAMY,
S/O.KANTHASWAMI CHETTIYAR, RESIDING AT 5/441
"LAKSHMI NILAYAM", KUTHAMBULLY THERUVU
KANIYARKODE VILLAGE, DESOM, THALAPPILLY TALUK
THRISSUR.

R1 BY ADV. SRI..THIYYANNOOR RAMAKRISHNAN (CAVEATOR)
R1 BY ADV. P ARUN KUMAR CAVEATOR)
R1 BY ADV. SMT.AMBIKA RADHAKRISHNAN

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 08-06-
2015 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.B.SURESH KUMAR, J.

R.S.A. No.103 of 2015

Dated 8th June, 2015

J U D G M E N T

The defendant in a suit for injunction is the appellant in this Second Appeal.

2. A large extent of property including the plaint schedule property belonged to the defendant. According to the plaintiff, the defendant assigned the said property to his father Kochappan as per Ext.A4 sale deed and Kochappan in turn assigned the same to the plaintiff as per Ext.A1 sale deed on 25.10.1996. The case of the plaintiff is that out of the property obtained by him as per Ext.A1 sale deed, he sold a portion to one Saumini and the rest, which is the plaint schedule property, is in his absolute possession and enjoyment. According to the plaintiff, the wife of the defendant has an item of property on the east of the plaint schedule property and though there is a well defined boundary separating the plaint schedule property with the property of the wife of the defendant, the defendant is attempting to trespass into the

plaint schedule property. The plaintiff has, therefore, claimed a permanent prohibitory injunction restraining the defendant from trespassing into the plaint schedule property and committing waste therein.

3. During the pendency of the suit, the plaintiff died. As the plaintiff had sold the plaint schedule property prior to his death, the assignee of the plaintiff got himself impleaded in the suit as additional plaintiff.

4. The defendant filed a written statement contending, among others, that Ext.A4 sale deed was executed by him in favour of his father to enable his father to avail a loan from the original plaintiff against the security of the said property; that since there was no intention to transfer the property, the possession of the property was not parted with at the time of execution of Ext.A4 sale deed and therefore, the plaintiff and the additional plaintiff who have not obtained possession of plaint schedule property are not entitled to the relief sought for in the suit.

5. The trial court, on an elaborate consideration of the materials on record, found that the plaintiff is in possession of

the plaint schedule property. Consequently, the suit was decreed and the decision was confirmed in appeal. The defendant is aggrieved by the concurrent decisions of the courts below and hence this appeal.

6. It is seen that at the time of trial, the defendant has produced Ext.B1, an agreement allegedly executed by his father in his favour on 26.10.1996 and attempted to substantiate his case that he has not parted with the possession of the property on the basis of the said document. It is stated in Ext.B1 that Ext.A1 is only a document created to secure the loan availed by the father of the defendant from the original plaintiff. As per Ext.B1, the father of the defendant had authorised the defendant to discharge the loan liability and get the sale deed of the property from the original plaintiff. The plaintiff is not a party to the said agreement. There is also no pleading regarding the said agreement in the written statement filed by the defendant. The father of the defendant died during October, 1996. There is nothing on record to indicate that the defendant has taken any steps pursuant to Ext.B1 agreement to liquidate the liability of the plaintiff till 2006 when the suit

was filed. The courts below, in the circumstances, did not accept the case set up by the defendant on the strength of Ext.B1 agreement. Further, though it was contended by the defendant that the plaint schedule property has no access otherwise than through the property of his wife, the courts below found that the said contention is not sustainable in the light of the admission made by the defendant as DW1 that his father sold the property to the plaintiff with the right of access. Again, on the basis of the materials on record, the courts below found that the plaintiff is in possession of the plaint schedule property. The impugned decisions have been rendered on that basis. In the light of the aforesaid facts, I do not find any question of law, much less any substantial question of law, arising for decision in this Second Appeal. The Second Appeal is therefore, devoid of merits and the same is accordingly dismissed *in limine*.

Sd/-

P.B.SURESH KUMAR, JUDGE.

tgs

(true copy)