

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

TUESDAY, THE 16TH DAY OF JUNE 2015/26TH JYAISHTA, 1937

RSA.No. 116 of 2015 ()

**AGAINST THE JUDGMENT AND DECREE IN AS 206/2009 of PRL.SUB COURT,
TRIVANDRUM DATED 22-11-2013.**

**AGAINST THE JUDGMENT AND DECREE IN OS 1417/2005 of PRL.MUNSIFF'S COURT,
TRIVANDRUM DATED 12-06-2007.**

APPELLANT(S)/APPELLANTS/DEFENDANTS:

- 1. MINOR AHALYA UNNIKRIISHNAN, AGED 13 YEARS,
HARIMANGALATHU HOUSE, KARIKKAKOM,
KADAKAMPALLY, THIRUVANANTHAPURAM,
REPRESENTED BY HER MOTHER GEETHA LEKSHMI,
D/O.KAMALAMMA (GUARDIAN WAS APPOINTED BY
ORDER DATED 26-07-2008 IN I.A NO.1393/2008).**
- 2. UNNIKRIISHNAN NAIR, AGED 55 YEARS,
S/O.KESAVA PILLAI, HARIMANGALATHU HOUSE,
KARIKKAKOM, KADAKAMPALLY, THIRUVANANTHAPURAM.**

**BY ADVS.SRI.R.S.KALKURA.
SRI.M.S.KALESH.
SRI.HARISH GOPINATH.
SMT.R.BINDU.**

RESPONDENT/RESPONDENT/PLAINTIFF:

**SREEJA N.R., AGED 32 YEARS,
D/O.NARAYANAN, PLAVILA KADAMARATHALAKKAL ,
PADMANABHAMANDHIRAM, NEYYATTINKARA,
THIRUVANANTHAPURAM- 695 121.**

BY ADV. SRI.G.S.REGHUNATH.

**THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON
16-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

amk

A.HARIPRASAD, J.

R.S.A No.116 of 2015

Dated this the 16th day of June, 2015.

J U D G M E N T

Defendants in O.S No.1417/2005 on the file of the Principal Munsiff's Court, Thiruvananthapuram are the appellants. The suit for declaration, recovery of possession, prohibitory injunction, mandatory injunction and for putting up boundary was filed by the respondent against the appellants.

2. Heard the learned counsel for the appellants and the respondent.

3. Complaint averments in short are as follows :

Plaintiff (respondent) is the owner in possession of plaintiff A schedule property by virtue of Ext.A1 settlement deed of the year 2004. Plaintiff effected mutation and paid basic tax to the land. Plaintiff's paternal grandmother Janamma was the original owner and she executed the settlement deed in favour of the plaintiff. Second defendant is the paternal uncle of the plaintiff. Second defendant obtained plaintiff B schedule property

measuring 7 cents by virtue of another settlement deed executed on the same day. It is seen that there were bickerings in their family which resulted in execution of Ext.A4 deed by the said Janamma. It is the case of the defendants that subsequently the said property was settled in favour of the first defendant.

4. The trial court after examining witnesses and perusing documents found that cancellation of Ext.A4 settlement deed is not legally sustainable and the suit was decreed as prayed for. Thereafter, the defendants took up the matter in appeal before the Principal Sub Court, Thiruvananthapuram as A.S No.206/2009. Learned Sub Judge after re-appreciating the evidence found no merit in the appeal and it was dismissed.

5. After hearing the learned counsel for the appellants and on perusing the records, I do not find any substantial question of law arising in this matter. Courts below correctly

decided the legal question regarding the unsustainability of Ext.A7 cancellation deed. Courts below rightly held that Ext.A4 settlement deed is a valid document favouring the plaintiff and the reliefs were properly granted.

6. Learned counsel for the appellants submitted that the appellants are prepared to demolish in two months that portion of the building constructed in plaint B schedule which is protruding into plaint A schedule and marked as KLYHIJ by the Commissioner in his plan. The reliefs sought in the plaint is for fixation of boundary and recovery of possession of the portion which is encroached upon by the appellants for constructing their house. Considering the relationship between the parties and the entire facts and circumstances of the case, I dispose the regular second appeal with following directions :

If the appellants file an affidavit unconditionally undertaking to demolish that portion of their house in plaint B

schedule protruding into plaint A schedule, which is marked as KLYHIJ in the Commissioner's plan, within a period of two months, the executing court shall hold the execution proceedings for a period of two months. It is also directed that the appellants should file an affidavit unconditionally undertaking to do so with a period of two weeks from today. If there is any violation on the part of the appellants in doing so, the execution court shall proceed with the matter as directed in the decree and from the stage where it now stands.

The appeal disposed accordingly.

All pending interlocutory applications will stand dismissed.

**Sd/-
A.HARIPRASAD,
JUDGE.**

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///True copy///

P.A to Judge