

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

WEDNESDAY, THE 9TH DAY OF SEPTEMBER 2015/18TH BHADRA, 1937

RSA.No. 179 of 2015

**AS 17/2009 OF SUB COURT, HOSDRUG, DATED 03-09-2014
OS 131/2006 OF MUNSIF COURT, HOSDRUG, DATED 19-03-2009**

APPELLANT(S)/APPELLANT/DEFENDANT:

**NADUVILVEETIL RAMAKRISHNAN NAIR, AGED 50 YEARS,
S/O.KRISHNAN NAIR, ROHINILAYAM, R/AT MOYOLAM,
PERIYA VILLAGE, PERIYA P.O, HOSDURG TALUK,
KASARAGOD DISTRICT.**

**BY ADVS.SRI.SREELAL N.WARRIER
SRI.RAHUL SASI
SMT.NEETHU PREM**

RESPONDENT(S)/RESPONDENT/PLAINTIFF:

**P.BALAKRISHNAN, AGED 59 YEARS,
S/O.KANNAN, LAXMI NAGAR,
NOW NEAR DURGA HIGHER SECONDARY SCHOOL, KANHANGAD,
BELLA VILLAGE, KANHANGAD P.O., HOSDURG TALUK,
KASARAGOD DISTRICT-671135.**

BY ADV. SRI.T.K.VIPINDAS

**THIS REGULAR SECOND APPEAL HAVING BEEN FINALLY HEARD
ON 09-09-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

PJ

P.B.SURESH KUMAR, J.

R.S.A. No.179 of 2015

Dated 9th September, 2015

J U D G M E N T

The defendant in the suit is the appellant.

2. The suit was one for recovery of possession and mandatory injunction. The suit property consists of two items comprised in resurvey No.182/1 of Periya Village, of which one is measuring 1 ½ cents and the other is measuring ½ cents. According to the plaintiff, the suit property is part of the property obtained by the plaintiff as per Ext.A1 patta. The defendant owns properties on the west of the suit property in resurvey No.183. According to the plaintiff, in between the properties of the plaintiff and defendant, there exists a strip of Government land having a width of 35 links. The case of the plaintiff is that the defendant has annexed the Government property lying in between the properties of the parties as also the suit property and constructed a compound wall. Hence the suit for recovery of possession of the suit property as also for a mandatory injunction directing removal of the compound wall.

3. The defendant disputed the title of the plaintiff

over the suit property. According to him, the suit property is not part of the property covered by Ext.A1 patta. Alternatively, he contended that he and his predecessors are in possession of the suit property and the Government property lying in between the properties of the parties for more than 30 years, openly, continuously to the knowledge of the plaintiff and the Government with hostile animus and thus perfected title over the same by adverse possession and limitation.

4. The trial court held that the suit property is part of the property obtained by the plaintiff as per Ext.A1 patta and that therefore, the plaintiff has title over the same. The trial court also found that the defendant has not established title to the suit property by adverse possession and limitation. Consequently, the suit was decreed as prayed for. The appellate court, on a reappraisal of the evidence on record, confirmed the decision of the trial court. Hence this Second appeal.

5. Heard the learned counsel for the appellant.

6. The Commissioner appointed in the suit identified the property covered by Ext.A1 patta in the reports filed by

him. Exts.C1 and C3 are the reports and Exts.C2 and C4 are the plans filed by the Advocate Commissioner. In Ext.C4 plan, the Commissioner identified the suit properties as part of the property covered by Ext.A1 patta. In Ext.C4 plan, the Commissioner has marked the suit properties as plots 'X' and 'Y'. The courts below found that there is absolutely no material on record to doubt the identification of the suit properties made by the Advocate Commissioner. As noticed above, the specific case of the plaintiff is that there lies a bit of Government land in between his property and the property of the defendant and that the suit property which lies on the further east of the Government property has been encroached upon by the defendant. The defendant does not dispute the fact that there lies a property of the Government in between the properties of the parties. At the time of his evidence, he has also taken the stand that he is in possession of the said Government land. As indicated by the courts below, the said stand of the defendant also probabilises the case of the plaintiff. Be that as it may, so long as there is no material to indicate that the identification of the suit properties as part of the property obtained by the

plaintiff as per Ext.A1 patta by the Advocate Commissioner is incorrect, the courts below cannot be found fault with for having rendered a finding that the plaintiff has title to the suit property. Then the question is as to whether the defendant has perfected title over the same by adverse possession and limitation. In the written statement filed by the defendant, he disputed the title of the plaintiff over the suit properties. The plea of adverse possession was an alternate plea taken by him in the written statement. In **George v. Balakrishnan** (2014 (4) KLT 788), this Court held that the plea of adverse possession raised alternatively without admitting the title of the plaintiff, is unsustainable. There is therefore, no question of law, much less any substantial question of law, involved in this matter. The second appeal, in the circumstances, is devoid of merits and the same is accordingly dismissed *in limine*.

Sd/-

P.B.SURESH KUMAR, JUDGE.

tg

(true copy)