

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

TUESDAY, THE 7TH DAY OF APRIL 2015/17TH CHAITHRA, 1937

RSA.No. 308 of 2015 ()

**AGAINST THE JUDGMENT IN AS 84/2011 of ADDL. DISTRICT COURT, TIRUR
DATED 12-12-2014.**

**AGAINST THE JUDGMENT IN OS 150/1999 of MUNSIFF MAGISTRATE COURT,
PONNANI DATED 30-09-2004.**

APPELLANT/1ST APPELLANT/1ST DEFENDANT :

**KAKKATTPADI VELAYUDHAN @ THAMI, AGED 65 YEARS,
S/O.THOMBRAPADI KARIYAN, KAKKATTPADI HOUSE,
ALAMCODE AMSOM DESOM, PONNANI TALUK,
MALAPPURAM DISTRICT.**

BY ADV. SRI.JAMSHEED HAFIZ

**RESPONDENT/RESPONDENTS AND APPELLANTS 2 TO 5/
PLAINTIFF & DEFENDANTS 2 TO 6:**

- 1. KAKKATTPADI CHAKKI, AGED 81 YEARS,
D/O.LATE KARIYAN, KAKKATTPADI HOUSE.**
- 2. THANKA, AGED 43 YEARS,
W/O.KAKKATTPADI VELAYUDHAN.**
- 3. SUDHA, AGED 34 YEARS,
D/O.KAKKATTPADI VELAYUDHAN.**
- 4. BINDU, AGED 27 YEARS,
D/O.KAKKATTPADI VELAYUDHAN.**
- 5. RAMESH, AGED 23 YEARS,
S/O.KAKKATTPADI VELAYUDHAN.**
- 6. SATHEESAN, AGED 31 YEARS,
S/O.KAKKATTPADI VELAYUDHAN.**
- 7. KALI @ CHANDRIKA, AGED 46 YEARS,
W/O.CHERAKKAL KUNDAMARIPPADI KORMAN,
(ALL THE RESPONDENTS ARE RESIDING AT
ALAMCODE AMSOM DESOM, PONNANI TALUK,
MALAPPURAM DISTRICT - 679 585.)**

**THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON
07-04-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

amk

A.HARIPRASAD, J.

R.S.A No.308 of 2015

Dated this the 7th day of April, 2015.

J U D G M E N T

Appeal by the first defendant in O.S No.150/1999 before the court of Munsiff Magistrate Court, Ponnani. The suit is one for recovery of possession on the strength of title filed by the contesting respondents.

2. Heard the learned counsel for the appellant. The respondents/plaintiffs contended that the plaint schedule property belonged to Kakkatt Mana from where her father took the property on lease. Thereafter, they started residing in a small house in the property. After the death of the tenant, Karian, his right devolved on the plaintiff and her mother. Later, plaintiff's mother died and the plaintiff became the owner of the property. She obtained a purchase certificate through the Land Tribunal having jurisdiction. That is Ext.A1. Exts.A2 to A5 are the decrees and judgments in previous suits and appeals filed by the

plaintiff against the defendant for an injunction decree. The case of the plaintiff is that in the year 1995, the first defendant trespassed into the property and reduced the same to his possession.

3. The contesting defendant contended that the property belonged to one Kariyan in tenancy right obtained from Kakkatt Mana and after his death, the first defendant became the owner of the property. The plaintiff has no right or title over the property.

4. Learned counsel for the appellant submitted that the courts below failed to mention any valid reason to hold that the plaintiff/respondent has established her title over the property. It is also submitted by the learned counsel for the appellant that the previous suits (Exts.A2 to A5) were only for injunction and the question for title was never raised or decided in those proceedings. Therefore, the findings of the courts below that Exts.A2 to A5 would operate as resjudicata against the appellant

is legally unsustainable. This submission is forceful as those suits were only for injunction and the question involved was only the possession of the plaintiff on the date of suit. It is true that the judgments and decrees in the earlier rounds of litigation could not operate as resjudicata. The courts below found that Ext.A1 purchase certificate is conclusive proof to show that the plaintiff is having a valid title over the property. It has been held by a Division Bench of this Court in ***Ramakke v. Gopi (2011(4) K.L.T SN 76 (C. No.80)*** that Section 72K(2) of the Kerala Land Reforms Act (in short the 'K.L.R Act') proclaims the conclusiveness of the purchase certificate obtained in a properly constituted proceedings and it cannot be challenged without taking recourse to the provisions in the K.L.R Act. Even though the learned counsel for the appellant submitted that the order has been taken in appeal before the appellate authority under the K.L.R Act, no material is produced to show that fact. It is trite law that the plaintiff in a suit for recovery of possession has to

succeed or fail on the strength or weakness, as the case may be, of his own title. Here, the title of plaintiff has been established and her entitlement to possess is also established by documents. In the absence of any specific case set up by the defendant in the written statement, I am of the view that the appellant cannot be heard to say that the plaintiff has not established her title. I find no merit in the regular second appeal. Hence, it is dismissed.

All pending interlocutory applications will stand dismissed.

amk

Sd/-
A.HARIPRASAD,
JUDGE.

//True copy//

P.A to Judge