

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

MONDAY, THE 2ND DAY OF NOVEMBER 2015/11TH KARTHIKA, 1937

RSA.No. 367 of 2015 (B)

**(AGAINST THE JUDGMENT AND DECREE IN AS.NO. 58/2003 OF SUB COURT,
KASARAGOD DATED 14-01-2015)**

**(AGAINST THE JUDGMENT AND DECREE IN OS.NO. 186/2001 OF ADDL.MUNSIFF,
KASARAGOD DATED 25-01-2003)**

APPELLANT/1ST DEFENDANT/PLAINTIFF :

**P.A.ABDULLAKUNHI HAJI, AGED 62 YEARS,
S/O.AHMAD, CHEROOR, CHENGALA VILLAGE,
P.O.CHEROOR, KASARAGODE DISTRICT.**

BY ADV. SRI.M.K.CHANDRA MOHANDAS

RESPONDENT(S)/APPELLANT & ADDL.R2/DEFENDANT IN THE SUIT :

- 1. STATE OF KERALA,
REPRESENTED BY THE DISTRICT COLLECTOR,
KASARGODE- 671 121**
- 2. C.A. MOIDEEN KUNHI, AGED ABOUT 65 YEARS,
CHERIYAVEEDU HOUSE, CHEROOR, VHENGALA VILLAGE,
KASARGODE DISTRICT- 671 123**

**R1 BY GOVERNMENT PLEADER SRI.JOBY JOSEPH
R2 BY ADV. SRI.BECHU KURIAN THOMAS**

**THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION
ON 02-11-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

sts

P.B.SURESH KUMAR, J.

R.S.A.No.367 of 2015

Dated this the 2nd day of November, 2015

JUDGMENT

The plaintiff in a suit for declaration of title by adverse possession and injunction is the appellant in this second appeal.

2. The fact that the suit property is a Government land is not in dispute. The case of the plaintiff is that the suit property is part of the assignable lands maintained by the Government and that he is in possession of the same for the last more than 40 years. The defendants resisted the suit. According to the defendants, the plaintiff is not in possession of the suit property. The trial court held that the plaintiff is in possession of the suit

property and consequently decreed the suit. However in appeal, the appellate court reversed the finding of the trial court that the suit property is in the possession of the plaintiff and consequently dismissed the suit. The plaintiff who is aggrieved by the decision of the appellate court has thus come up in this second appeal.

3. Heard the learned counsel for the appellant.

4. As noticed above, the suit is one for declaration of title of the plaintiff over the suit property by adverse possession and for consequential injunction. Prayers (a) and (b) in the plaint read thus:

“(a) For a declaration that the plaintiff has perfected his title over the A schedule property by open, peaceful, continuous possession and as of right with hostile and perfected his title by adverse possession and limitation.

(b) For a consequential relief of permanent prohibitory injunction restraining the defendant, his men and agents from trespassing into the A schedule property.”

It is now settled that the suit for declaration of title by adverse possession is not maintainable. (See the decision of the Apex Court in **Gurudwara Sahib v. Gram Panchayat Village Sirthala and Another** [(2014) 1 SCC 669] and the decision of this Court in R.S.A. No.592 of 2015 dated 13.8.2015). As such, it cannot be said that the present suit is maintainable.

5. The learned counsel for the appellant contended that the additional respondent who got himself impleaded in the appeal has produced a few documents before the appellate court and it is based on the said documents, the appellate court came to the conclusion that the plaintiff is not in possession of the suit property. According to the learned counsel, the admission of the additional documents by the appellate court without affording the appellant an opportunity to disprove the facts sought to be proved by virtue of the said documents, is

illegal. In so far as it is found that the suit is not maintainable, the correctness of the decision of the appellate court in accepting the additional documents in evidence, according to me, does not arise for consideration in this second appeal.

In the said view of the matter, the second appeal is devoid of merits and the same is accordingly dismissed. All the interlocutory applications in the appeal are closed.

P.B.SURESH KUMAR, JUDGE.

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