

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

WEDNESDAY, THE 20TH DAY OF MAY 2015/30TH VAISAKHA, 1937

RSA.No. 388 of 2015 ()

**AGAINST THE JUDGMENT AND DECREE IN AS 233/2010 of ADDL.DISTRICT COURT - IV,
PALAKKAD DATED 23-01-2015.**

**AGAINST THE JUDGMENT AND DECREE IN OS 678/2008 of ADDL.MUNSIFF COURT,
PALAKKAD DATED 30-06-2010.**

APPELLANTS IN R.S.A-APPELLANTS IN A.S-DEFENDANTS IN SUIT :

- 1. ANTHONYSWAMY, AGED 62 YEARS,
S/O.GURUSWAMY, RESIDING AT KALLAMBULLIYAN HOUSE,
KANALPIRIVU, PAMPAMPALLAM P.O, PALAKKAD TALUK
PIN -678 621.**
- 2. MADALAMERRY, AGED 58 YEARS,
W/O. ANTHONYSWAMY, RESIDING AT KALLAMBULLIYAN HOUSE,
KANALPIRIVU, PAMPAMPALLAM P.O, PALAKKAD TALUK,
PIN -678 621.**

**BY ADVS.SRI.P.B.KRISHNAN.
SRI.P.M.NEELAKANDAN.
SRI.P.B.SUBRAMANYAN.
SRI.SABU GEORGE.
SRI.S.NITHIN (ANCHAL).**

RESPONDENTS IN R.S.A-RESPONDENTS IN A.S-L.RS OF THE PLAINTIFF IN SUIT:

- 1. PRAKASAM, AGED 75 YEARS,
W/O.LATE PAVIL KURUS, ERUMKULAM, KOZHIPARA P.O.,
CHITTUR TALUK, PALAKKAD DISTRICT, PIN 678 557.**
- 2. AANJI, AGED 57 YEARS,
D/O.LATE PAVIL KURUS, ERUMKULAM, KOZHIPARA P.O.,
CHITTUR TALUK, PALAKKAD DISTRICT, PIN 678 557.**
- 3. RANI, AGED 50 YEARS,
D/O.LATE PAVIL KURUS, ERUMKULAM, KOZHIPARA P.O.,
CHITTUR TALUK, PALAKKAD DISTRICT, PIN 678 557.**

**THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON
20-05-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

amk

A.HARIPRASAD, J.

R.S.A No.388 of 2015

Dated this the 20th day of May, 2015.

J U D G M E N T

The defendants, who suffered a decree in a suit for injunction, are the appellants. Brief case in the plaint is that the property originally belonged to Anthonyswamy, the first defendant. Second defendant is the wife of Anthonyswamy. O.S No.49/1990 was a suit filed by one Hridaya Mary against the first defendant for realization of money. The suit was decreed. There was execution proceedings as E.P No.213/1993 filed by the decree holder praying for the sale of property belonging to the judgment debtor. The plaintiff bid the property in court auction on 27-07-1994. The sale was subsequently confirmed and a certificate was issued by the executing court. The property was taken delivery by the plaintiff and thereafter he is in possession of the property. According to the plaintiff, the first defendant had no right or possession over the property. When the defendants attempted to trespass upon the property, the suit

was filed.

2. The appellants/defendants opposed the plaint claim by contending that the defendants were unaware of the suit filed by Hridaya Mary and all the proceedings consequent to the suit. According to the defendants, the documents relied on by the plaintiff were procured behind the back of defendants who are illiterate persons. The first defendant was under treatment for mental illness during the relevant period. Only for the last five years, he was leading a normal life. Parties are related to one another. The suit is without any bonafides.

3. Before the trial court, documents were produced by both sides. Court below relying on materials produced by the plaintiff held that he could establish his possession over the property as on the date of the suit. Learned Senior Counsel for the appellants submitted that the appellants were never dispossessed of the property pursuant to the court sale and

delivery. But this fact is not established by any evidence adduced and document produced by the appellants. The courts below considered all these contentions correctly and found that the plaintiff was in possession of the property. This being a suit for injunction simplicitor, the question of title may not be relevant. Assertion of the appellants that they never disassociated from possession of the property in spite of a court sale and delivery cannot be countenanced in view of the overwhelming evidence in this matter. Therefore, I find no substantial question of law in this appeal. Hence the regular second appeal is dismissed.

All pending interlocutory applications will stand dismissed.

Sd/-
A.HARIPRASAD,
JUDGE.

//True copy//

P.A to Judge