

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

MONDAY, THE 26TH DAY OF OCTOBER 2015/4TH KARTHIKA, 1937

RSA.No. 392 of 2015 ()

**AS 137/2003 of SUB COURT,KOTTARAKKARA
OS 78/1987 of MUNSIFF COURT, PUNALUR**

APPELLANTS/RESPONDENTS/PLAINTIFFS:-:

- 1. R.CHELLAPAN PILLAI,
S/O. RAMAN PILLAI, S/O.ANANDA MANDIRAM,
THOLICODE, PUNALUR. (DIED ON 01.12.1994).**
- 2. C.MOHANAN PILLAI, AGED 62 YEARS,
S/O.CHELLAPPAN PILLAI, R/O.DEEPAM HOUSE,
MANIYARKARA, PUNALUR VILLAGE.**
- 3. C.RAVEENDRA VIKRAMAN PILLAI ALIAS RAVEENDRAN PILLAI,
AGED 58 YEARS, S/O.CHELLAPPAN PILLAI,
R/O.ANANDA MANDIRAM, THOLICODE, PUNALUR VILLAGE.**

**BY ADVS.SRI.P.HARIDAS
SMT.S.SIKKY**

RESPONDENT/APPELLANT/DEFENDANT:-:

**STATE OF KERALA,
REPRESENTED BY THE REVENUE SECRETARY TO
THE GOVERNMENT OF KERALA
THIRUVANANTHAPURAM - 695 001.**

R1 BY GOVERNMENT PLEADER SRI. JOBY JOSEPH

**THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION
ON 26-10-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

bp

P.B.SURESH KUMAR, J.

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R.S.A.No.392 of 2015.

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Dated this the 26th day of October, 2015.

J U D G M E N T

The legal representatives of the plaintiff are the appellants in this Second Appeal.

2. The plaint schedule property measuring approximately 40 cents is part of a larger extent of 2 acres and 35 cents of road puramboke. The plaintiff is holding 1 acre and 42 cents of registered land adjoining the plaint schedule property. According to the plaintiff, he and his predecessors are in possession of the plaint schedule property along with the registered land for more than hundred years openly, continuously and adverse to the interest of the State and thus prescribed title over the same by adverse possession. The plaintiff, therefore, claimed a decree declaring his title over the plaint schedule property by adverse possession. Consequent reliefs were also claimed in the suit. The defendant contested the suit contending

that neither the plaintiff nor his predecessors were in possession of the plaint schedule property at any point of time. They also contended that since the plaintiff has cut and removed two trees stood in the plaint schedule property, proceedings have been initiated against him under the Land Conservancy Act and he was found guilty in the proceedings under the said Act. The trial court decreed the suit as prayed for. The defendant took up the matter in appeal. The appellate court, on a reappraisal of the evidence on record, found that the suit is not maintainable. The appellate court also found that the plaintiff has not established possession over the plaint schedule property adverse to the interest of the State. Consequently, the appellate court dismissed the suit reversing the decision of the trial court. The legal representatives of the plaintiff who are aggrieved by the decision of the appellate court have thus come up in this Second Appeal.

3. Heard the learned counsel for the appellants.

4. The Apex Court has held in **Gurudwara Sahib v. Gram Panchayat Village Sirthala** [2013 (4) KLT SN 28 (Case No.26) SC] that one cannot claim declaration of his title over a

property based on a plea of adverse possession and that the plea of adverse possession can be raised only as a defence in a suit for recovery of possession based on title. In the light of the said decision of the Apex Court, the view taken by the appellate court that the suit in the present case seeking declaration of the title of the plaintiff over the plaint schedule property is not maintainable, is perfectly in order.

5. That apart, on a reappraisal of the evidence on record, the appellate court found that the plaintiff has not established that he and his predecessors are in possession over the plaint schedule property adverse to the interests of the State. In the matter of rendering the said finding, the appellate court noticed that apart from the oral testimony of the plaintiff and his witnesses, there is nothing on record to indicate that the plaintiff and his predecessors are in possession of the suit property. The appellate court also noticed that there is no pleading in the plaint as to the date from which the plaintiff and his predecessors are possessing the plaint schedule property and the date from which their possession, if any, over the plaint schedule property became adverse to the interests of the State. The appellate court further

noticed that there is nothing on record to indicate that the possession, if any, of the plaintiff and his predecessors over the plaint schedule property is with the knowledge of the State. The question whether the plaintiff and his predecessors are in possession of the plaint schedule property adverse to the interests of the State is a pure question of fact. The finding rendered by the appellate court that the plaintiff has not established adverse possession over the plaint schedule property cannot, therefore, be challenged in a Second Appeal filed under Section 100 of the Code of Civil Procedure. There is no question of law, much less any substantial question of law, involved in this Second Appeal. The Second Appeal, in the circumstances, is devoid of merits and the same is, accordingly, dismissed. All the interlocutory applications in this case are closed.

**Sd/-
P.B.SURESH KUMAR,
JUDGE.**

Kvs/-

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PA TO JUDGE.