

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

THURSDAY, THE 10TH DAY OF DECEMBER 2015/19TH AGRAHAYANA, 1937

RSA.No. 396 of 2015

A.S.NO.40/2010 OF DISTRICT COURT, ALAPPUZHA

O.S.NO.166/2006 OF ADDITIONAL MUNSIF COURT, ALAPPUZHA

APPELLANT(S)/RESPONDENTS 1 TO 4 /DEFENDANTS 1 TO 4 :

1. VISWAMOHINI,
W/O.RAJAN, CHIRAYIL HOUSE, MANNANCHERRY MURI,
MANNANCHERRY VILLAGE, AMBALAPUZHA TALUK,
ALAPPUZHA DISTRICT.
2. VINOD,
S/O.RAJAN, CHIRAYIL HOUSE, MANNANCHERRY MURI,
MANNANCHERRY VILLAGE, AMBALAPUZHA TALUK,
ALAPPUZHA DISTRICT.
3. PRASOBHA,
D/O.RAJAN, CHIRAYIL HOUSE, MANNANCHERRY MURI,
MANNANCHERRY VILLAGE, AMBALAPUZHA TALUK,
ALAPPUZHA DISTRICT.
4. KAVITHA,
D/O.RAJAN, CHIRAYIL HOUSE, MANNANCHERRY MURI,
MANNANCHERRY VILLAGE, AMBALAPUZHA TALUK,
ALAPPUZHA DISTRICT.

BY ADV. SRI.S.PRAKASH

RESPONDENT(S)/APPELLANTS & RESPONDENT 5 & 6/PLAINTIFFS &
DEFENDANTS 5 & 6:

1. VAVA CHIDAMBARAN,
S/O.VAVA, KANIYAMVELIL HOUSE, MANNANCHERRY MURI,
KOMALAPURAM VILLAGE, AMBALAPUZHA TALUK,
ALAPPUZHA 688 538.

RSA.No. 396 of 2015

- 2. PAVITHRAN,
S/O.VAVA, KANIYAMVELIL HOUSE, MANNANCHERRY MURI,
KOMALAPURAM VILLAGE, AMBALAPUZHA TALUK,
ALAPPUZHA 688 538.**
 - 3. LEELA,
D/O.VAVA, THOTTUKNAL CHIRAYIL HOUSE, MUHAMMA P.O.,
KANJIKUZH VILLAGE, CHERTHALA, ALAPPUZHA 688 525.**
 - * 4. ASIF,
S/O.ABDUL KHADER, ASIF MANZIL, SEA VIEW WARD,
ALAPPUZHA WEST VILLAGE, ALAPPUZHA 688 001.(DELETED)**
 - * 5. BHASURANGAN,
S/O.RAMANKUTTY, ANANDA MANDIRAM, MANNANCHERRY MURI,
MANNANCHERRY VILLAGE, AMBALAPUZHA TALUK,
ALAPPUZHA -688 538.(DELETED).**
- * R4 AND R5 ARE DELETED FROM THE PARTY ARRAY AS PER ORDER
DATED 30.03.2015 IN I.A.NO.851 OF 2015, AT THE RISK OF THE APPELLANT.**

**R1 TO R3 BY ADVS. SMT.C.G.BINDU
SMT.C.G.AJITHA**

**THIS REGULAR SECOND APPEAL HAVING BEEN FINALLY HEARD
ON 10-12-2015, ALONG WITH C.O.NO.97 OF 2015, THE COURT ON
THE SAME DAY DELIVERED THE FOLLOWING:**

Msd.

P.B.SURESH KUMAR, J.

R.S.A.No.396 of 2015 & Cross Objection No.97 of 2015

Dated this the 10th day of December, 2015

JUDGMENT

Defendants 1 to 4 in a suit for fixation of boundary, recovery of possession and injunction, both prohibitory and mandatory, are the appellants in this appeal.

2. The suit property belonged to the predecessor of the plaintiffs, Bhavani. According to the plaintiffs, on 5.2.2006, defendants 1 to 4 trespassed into the north-eastern portion of the suit property and constructed a structure therein. It is also the case of the plaintiffs that on the very same day, the sixth defendant who owns property on the south of the plaint schedule property removed the

boundary stones separating the suit property with his property. The suit was, therefore, filed for fixation of the boundaries of the suit property, recovery of possession of the portion of the property trespassed into by the defendants and for mandatory injunction directing the defendants 1 to 4 to remove the constructions made by them in the suit property. Defendants 1 to 4 contended that the constructions referred to by the plaintiff in the plaint are constructions made by them in their property. In other words, the boundary separating the suit property and the property owned by defendants 1 to 4 was disputed. The sixth defendant disputed the title and possession of the plaintiffs over the suit property.

3. The suit property was earlier in the possession of defendants 1 to 4. The predecessor of the plaintiff Bhavani instituted a suit as O.S.No.63 of 1992 against defendants 1 to 4 seeking a decree declaring her title over the suit property, fixing the boundary separating

the suit property with the property of defendants 1 to 4 and for recovering possession of the property from the said defendants. The said suit was decreed fixing the boundary separating the aforesaid properties and permitting Bhavani to recover possession of the suit property from defendants 1 to 4. Bhavani obtained the suit property in execution of the said decree on 5.6.2000. Ext.A8 is the plan of the suit property prepared by the Advocate Commissioner appointed in O.S.No.63 of 1992. Ext.C1(b) is the plan prepared by the Advocate Commissioner appointed in the present suit in accordance with Ext.A8 plan. Despite the decision in O.S.No.63 of 1992, the trial court dismissed the suit mainly on the ground that the plaintiffs have not established the identity of the suit property. The plaintiffs took up the matter in appeal. The appellate court took the view that defendants 1 to 4 are bound by the decree in O.S.No.63 of 1992 and consequently reversed the decision of the trial court and decreed the suit fixing the boundary separating

the properties in accordance with Ext.C1(b) plan. A decree for mandatory injunction directing defendants 1 to 4 to remove the structures erected by them in the suit property, the boundaries of which have been fixed as per impugned decree, was also granted. Since the sixth defendant was not a party to the earlier suit, the suit in so far as it relates to the sixth defendant, was remitted to the trial court for fresh disposal. Defendants 1 to 4, who are aggrieved by the decision of the lower appellate court, have thus come up in this second appeal.

4. Heard the learned for the appellants as also the learned counsel for respondents 1 to 3.

5. As noticed above, O.S.No.63 of 1992 was a suit for declaration of title, fixation of boundary and recovery of possession filed by Bhavani, the predecessor of the plaintiffs. Defendants 1 to 4 were parties to the said suit. The said suit was decreed fixing the boundary separating the suit property with the property of defendants

1 to 4. Ext.A8 is the plan of the suit property prepared by the Advocate Commissioner appointed in O.S.No.63 of 1992. Ext.C1(b) is the plan prepared by the Advocate Commissioner appointed in the present suit in accordance with Ext.A8 plan. As such, defendants 1 to 4 cannot be heard to contend that the fixation of the boundary made by the appellate court is incorrect or faulty in any manner.

6. As noted above, defendants 1 to 4 were directed to remove, as per the decree impugned in this appeal, the portion of their residential building which is protruding into the suit property. A close reading of the plaint indicates that no relief was sought in respect of the said building portion. The suit property in the present suit is the suit property in the earlier suit excluding the 12 sq. meters of land in which the building of the defendants 1 to 4 is situated. The aforesaid aspect, in the circumstances, needs to be clarified.

7. In this appeal, the plaintiffs preferred a cross

objection challenging the decision of the appellate court in remitting the suit, in so far as it relates to the sixth defendant, for fresh disposal. The present appeal being one preferred by defendants 1 to 4, a cross objection against the sixth defendant is not maintainable in this appeal.

In the result, the second appeal and the cross objection are dismissed. It is, however, made clear that the 12 sq. meters of land in which the building of defendants 1 to 4 is situated, is not part of the suit property. All the interlocutory applications in the appeal are closed.

P.B.SURESH KUMAR, JUDGE.

smm