

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

WEDNESDAY, THE 25TH DAY OF NOVEMBER 2015/4TH AGRAHAYANA, 1937

RSA.No. 398 of 2015 (E)

**AS 56/2010 of II ADDL. DISTRICT COURT, MAVELIKKARA
OS 40/2005 of MUNSIF COURT, KAYAMKULAM**

APPELLANTS/APPELLANTS/DEFENDANTS :

- 1. AJAYAKUMAR, AGED 51 YEARS,
S/O. LATE NANUKKUTTAPPA PANICKER, SARADALAYAM,
NORTH KOCHUMURI, PUTHUPPALLY VILLAGE,
KAYAMKULAM P.O., ALAPPUZHA - 690502**
- 2. SUPRABHA, AGED 46 YEARS,
W/O.AJAYAKUMAR, SARADALAYAM, NORTH
KOCHUMURI, PUTHUPPALLY VILLAGE, KAYAMKULAM P O
KAYAMKULAM P. O., ALAPPUZHA 690502**

**BY ADVS.SRI.P.B.SAHASRANAMAN
SRI.T.S.HARIKUMAR
SRI.K.JAGADEESH**

RESPONDENTS/RESPONDENTS/ADDL.PLAINTIFFS :

- 1. USHA, AGED 60 YEARS,
W/O. LATE VAMADEVAPANICKER, BLOCK NO 1059
KATTEKKANAMBHAGOM, KARUNAPURAM VILLAGE
UDUMPANCHOLA TALUK, UDUMPANCHOLA P. O., IDUKKI 685554
FROM PUTHUPURACKAL VEEDU, NORTH KOCHUMURI,
PUTHUPPALLY VILLAGE.**
- 2. RAJESWARI, AGED 45 YEARS,
D/O.VAMADEVA PANICKER, BLOCK NO 1059,
KATTEKKANAMBHAGOM, KARUNAPURAM VILLAGE,
UDUMPANCHOLA TALUK, UDUMPANCHOLA P. O., IDUKKI 685554
FROM PUTHUPURACKAL VEEDU, NORTH KOCHUMURI
PUTHUPPALLY VILLAGE**
- 3. MANOJ, AGED 43 YEARS,
S/O.VAMADEVA PANICKER, BLOCK NO 1059,
KATTEKKANAMBHAGOM, KARUNAPURAM VILLAGE,
UDUMPANCHOLA TALUK, UDUMPANCHOLA P. O., IDUKKI 685554
FROM PUTHUPURACKAL VEEDU, NORTH KOCHUMURI,
PUTHUPPALLY VILLAGE**

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4. SUBHAMOL, AGED 41 YEARS,
S/O. VAMADEVA PANICKER, BLOCK NO 1059
KATTEKKANAMBHAGOM, KARUNAPURAM VILLAGE
UDUMPANCHOLA TALUK, UDUMPANCHOLA P O, IDUKKI 685554
FROM PUTHUPURACKAL VEEDU, NORTH KOCHUMURI
PUTHUPALLY VILLAGE

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION
ON 25-11-2015, ALONG WITH RSA. 401/2015, THE COURT ON THE SAME
DAY DELIVERED THE FOLLOWING:

bp

P.B.SURESH KUMAR, J.

R.S.A.No.398 & 401 of 2015

Dated this the 25th day of November, 2015

JUDGMENT

These appeals are preferred challenging the common judgment in A.S.Nos.55 and 56 of 2010 on the file of the District Court, Mavelikkara. Among the said appeals, A.S.No.55 of 2010 was preferred challenging the decision in O.S.No.224 of 2005 and A.S.No.56 of 2010 was preferred challenging the decision in O.S.No.40 of 2005. The suits O.S.No.40 of 2005 as also O.S.No.224 of 2005 were tried jointly, treating O.S.No.40 of 2005 as the leading case. As such, I am referring to the parties in this judgment as they appear in O.S.No.40 of 2005.

2. The suit was one for recovery of possession as also mandatory and prohibitory injunction. The suit

property belonged to the father of the plaintiff, Nanukutta Panickan. According to the plaintiff, he left his father and started residing with his father's brother Ummini Kunju Panickan when the relationship between his father and mother estranged. Thereafter, Nanukutta Panickan was residing in the suit property with another woman called Sarada. The case of the plaintiff is that on the death of Nanukutta Panickan, he being the only legal representative of Nanukutta Panickan, the suit property devolved on him. It is also the case of the plaintiff that earlier he instituted a suit as O.S.No.147 of 1995 against Sarada for declaration of his title over the suit property and for recovery of possession. According to him, though the said suit was decreed, he could not obtain possession of the property as in the meanwhile, the defendants started occupying the building pretending that the first defendant is the adopted son of Nanukutta Panickan. According to the plaintiff, the defendants have no right in the property and that he is

entitled to recover possession of the suit property from them. The defendants contested the suit. According to the defendants, the first defendant is the adopted son of Nanukutta Panickan and that therefore, the suit property devolved on him on the death of Nanukutta Panickan. They also contended that the plaintiff is not the son of Nanukutta Panickan. In the meanwhile, the first defendant filed O.S.No.224 of 2005 for declaration of his title and possession over the suit property on the basis that he is the adopted son of Nanukutta Panickan. As indicated above, the suits were tried together, treating O.S.No.40 of 2005 as the lead case. The trial court found that the defendants are bound by the decision in the earlier suit O.S.No.147 of 1995 and that since it was found in the said case that the plaintiff is the son of Nanukutta Panickan, the said issue cannot be agitated by the defendants again. As regards the adoption claimed by the first defendant, the court found that since the plaintiff is found to be the son of Nanukutta Panickan,

the adoption, if any, made by Nanukutta Panickan is invalid in the light of Section 11(1) of the Hindu Adoptions and Maintenance Act 1956. Consequently, O.S.No.40 of 2005 was decreed and O.S.No.224 of 2005 was dismissed. Though the defendants took up the matter in appeal, the appellate court confirmed the decision of the trial court. Hence, these appeals by the defendants.

3. Heard the learned counsel for the appellants.

4. The learned counsel for the appellants argued that though the defendants have raised a specific contention that the plaintiff is not the son of Nanukutta Panickan, the said contention was repelled by the courts below, holding that the said issue was concluded in the earlier suit O.S.No.147 of 1995. According to the learned counsel, in so far as the first defendant was not a party to the earlier suit O.S.No.147 of 1995, he is not bound by the decision in O.S.No.147 of 1995 and the issue as to whether the plaintiff is the son of Nanukutta Panickan should have been decided

by the courts below on merits. The learned counsel relied on Ext.B21 document in support of the case of the defendants that the plaintiff is not the son of Nanukutta Panickan. Ext.B21 is the partition deed executed between the children of the elder brother of Nanukutta Panickan namely, Ummini Kunju Panickan, wherein the plaintiff is shown as his son. I do not find any merit in the contention raised by the learned counsel for the appellants. The specific pleadings of the appellants in the written statement filed by them in O.S.No.40 of 2005 is that Sarada is the legally wedded wife of Nanukutta Panickan and that the first defendant is their adopted son. Admittedly, Sarada is the defendant in O.S.No.147 of 1995. Sarada specifically raised a contention in O.S.No.147 of 1995 that the plaintiff is not the son of Nanukutta Panickan. The said contention was turned down in the said suit. As noticed above, the case of the first defendant is that he is the adopted son of Nanukutta Panickan and Sarada. It is thus evident that the first

defendant is claiming under Sarada. Since the first defendant is claiming under Sarada, he is bound by the decree in O.S.No.147 of 1995. The first defendant, in the circumstances, cannot be heard to contend that the plaintiff is not the son of Nanukutta Panickan.

In the said view of the matter, I do not find any merit in the second appeals and the same are, accordingly, dismissed. All the interlocutory applications in the appeals are closed.

P.B.SURESH KUMAR, JUDGE.

smm