

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

TUESDAY, THE 1ST DAY OF SEPTEMBER 2015/10TH BHADRA, 1937

RSA.No. 462 of 2015 ()

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AGAINST THE JUDGMENT IN AS. NO.7/2011 OF SUB COURT, THIRUVALLA
DATED 30-01-2015**

**AGAINST THE JUDGMENT IN OS. NO.387/2006 OF MUNSIF COURT, THIRUVALLA
DATED 30-11-2010.**

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APPELLANT/APPELLANT/DEFENDANT:

**V.K. KURUVILA, AGED 57 YEARS,
VALLOMTHARAYIL HOUSE, MOOTHEDENS, MARAMON P.O.,
THIRUVALLA TALUK, PATHANAMTHITTA DISTRICT.**

BY ADV. SRI.M.NARENDRA KUMAR.

RESPONDENT/RESPONDENT/PLAINTIFF:

**THOMAS, AGED 82 YEARS,
MULAPPOMANNIL HOUSE, MARAMON P.O.,
THIRUVALLA TALUK, PATHANAMTHITTA DISTRICT-689 101.**

ADV. SRI.S. VIDYASAGAR (CAVEATOR).

**THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION
ON 01-09-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

rs.

P.B.SURESH KUMAR, J.

R.S.A.No.462 of 2015

Dated this the 1st day of September, 2015

JUDGMENT

The defendant in a suit for eviction is the appellant.

2. The case of the plaintiff is that the defendant who was inducted as a licensee of the plaintiff schedule building is refusing to vacate the building even after receipt of the notice revoking the licence. The suit was resisted by the defendant contending that the plaintiff schedule building has been constructed by him as permitted by the plaintiff and that therefore he is entitled to the protection of Section 60(b) of the Indian Easements Act. The trial court, on the basis of the materials on record, came to the conclusion that the plaintiff schedule building has been constructed by the

plaintiff himself and consequently decreed the suit. The appellate court, on a reappraisal of the evidence, confirmed the decision of the trial court. The defendant is aggrieved by the decision of the trial court.

3. Heard the learned counsel for the appellant.

4. The essence of the contentions raised in the appeal is as to the correctness of the concurrent decisions of the courts below that the plaint schedule building is a building constructed by the plaintiff. The question whether the plaint schedule building is a building constructed by the plaintiff or not being a pure question of fact, I do not think that the correctness of the same can be examined by this Court in a Second Appeal filed under Section 100 of the Code of Civil Procedure. The Second Appeal, in the circumstances, is devoid of merits and the same is, accordingly, dismissed *in limine*.

Admittedly, the appellant/defendant is running a

business in the plaint schedule building for quite some time. In the said circumstances, I deem it appropriate to grant a reasonable time to the appellant to surrender vacant possession of the plaint schedule building. The appellant is therefore granted a period of six months from today to surrender vacant possession of the plaint schedule building, provided he files an affidavit to that effect before the trial court within two weeks from the date of receipt of a copy of this judgment.

P.B.SURESH KUMAR, JUDGE.

smm