

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

TUESDAY, THE 4TH DAY OF AUGUST 2015/13TH SRAVANA, 1937

RSA.No. 532 of 2015 ()

**AGAINST THE JUDGMENT AND DECREE IN AS 236/2012 of II ADDL.DISTRICT COURT,
PALAKKAD DATED 31-10-2014.**

**AGAINST THE JUDGMENT AND DECREE IN OS 598/2010 of MUNSIFF COURT,
CHITTUR DATED 29-09-2012.**

APPELLANT/PLAINTIFF:

**KESAVAN, AGED 82 YEARS,
S/O.ARUMUGHAN, RESIDING AT CHERIYANDIKOLUMBU,
KOLLENGODE NO.I VILLAGE, CHITTUR TALUK.**

**BY ADVS.SRI.G.HARIHARAN.
SRI.PRAVEEN.H.**

RESPONDENTS/DEFENDANTS:

- 1. CHANDRAN, AGED 42 YEARS,
S/O.CHAMI, RESIDING AT CHERIYANDIKOLUMBU,
KOLLENGODE NO.I VILLAGE, CHITTUR TLAUK.**
- 2. DEVI, AGED 34 YEARS,
D/O.CHAMI, RESIDING AT CHERIYANDIKOLUMBU,
KOLLENGODE NO.I VILLAGE, CHITTUR TLAUK.**
- 3. VELLACHI, AGED 52 YEARS,
W/O.KARUMAN, RESIDING AT CHERIYANDIKOLUMBU,
KOLLENGODE NO.I VILLAGE, CHITTUR TLAUK.**

**R1 BY ADVS. SRI.P.R.VENKETESH.
& SMT.ASHA P KURIAKOSE.**

**THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON
04-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

amk

A.HARIPRASAD, J.

R.S.A No.532 of 2015

Dated this the 04th day of August, 2015.

J U D G M E N T

The appellant is the plaintiff in O.S No.598/2010 before the Munsiff's Court, Chittur. The suit is one for permanent prohibitory injunction, which was dismissed concurrently by the trial court and first appellate court. Hence this appeal.

2. Heard the learned counsel for the appellant/plaintiff. Perused the impugned judgments. Relevant pleadings in brief are as follows :

The plaint schedule property with other items belonged to the family of plaintiff. It was partitioned in the year 1981 by virtue of Ext.A4 partition deed. Plaint B schedule properties in that deed was allotted to the share of the plaintiff. Item No.4 in the B schedule property is the plaint schedule property. Plaintiff is the owner in possession of the property by virtue of the said document. The defendants have no manner of right or

possession over the property.

3. Defendant filed a written statement contending that they were not aware of the partition deed relied on by the plaintiff. According to them, the plaintiff has no right over the plaint schedule property. The defendants obtained pattayam in respect of 6 cents of property as per the proceedings before the Land Tribunal, Kollengode. The defendants never intend to trespass upon the property.

4. The trial court framed issues relating to plaintiff's possession over the plaint schedule property and his entitlement to claim injunction. After analysing the evidence, the court below found that the plaintiff failed to identify the property. Further it also found that the plaintiff did not prove possession of the property as on the date of suit. Dissatisfied with the decree and judgment of the trial court, the plaintiff approached the lower appellate court. That court also agreed with the

findings of the trial court and found that the plaintiff failed to establish his possession over the property. None of the court has decided the title claimed by the plaintiff. Therefore, the remedy of the plaintiff, if any, is to file a comprehensive suit. I do not find any illegality or irregularity in the judgments of the courts below and no substantial question of law arises in this appeal. Hence the regular second appeal is dismissed.

All pending interlocutory applications will stand dismissed.

**Sd/-
A.HARIPRASAD,
JUDGE.**

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P.A to Judge