

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

TUESDAY, THE 9TH DAY OF JUNE 2015/19TH JYAISHTA, 1937

RSA.No. 550 of 2015 ()

**AGAINST THE JUDGMENT AND DECREE IN AS 56/2012 of DISTRICT COURT,
ALAPPUZHA DATED 17-12-2014.**

**AGAINST THE JUDGMENT AND DECREE IN OS 1120/2001 of ADDL.MUNSIFF COURT,
ALAPPUZHA DATED 30-03-2011.**

APPELLANT(S)/APPELLANT/IST DEFENDANT:

**SUBAIDA, AGED 65 YEARS,
ANCHIL VELIYIL HOUSE, PUNNAPRA MURI,
PUNNAPRA VILLAGE, ALAPPUZHA.**

BY ADV. SMT.S.SUJINI.

RESPONDENT(S)/2ND RESPONDENTS/2ND PLAINTIFF:

- 1. GEORGE BENCHAMIN, AGED 48 YEARS,
S/O.LATE BENCHAMIN, POLLAYIL HOUSE, PUNNAPRA MURI,
PUNNAPRA VILLAGE, ALAPPUZHA - 688 003.**
- 2. PHILOMINA,
KOCHUMAMPARAMBU, PUNNAPRA, ALAPPUZHA - 688 003.**
- 3. SOOSAMMA PETER,
MARIYA POZHYYIL, THAIKKAL P.O., ALAPPUZHA - 688 003.**
- 4. REETHAMMA,
PANACKAL PURACKAL, VADACKAL, ALAPPUZHA - 688 003.**
- 5. LILLYKUTTY,
SASTHAMPARAMBIL, KATTOOR P.O., KALAVOOR,
ALAPPUZHA - 688 003.**
- 6. ELSY VARGHESE, AGED 73 YEARS,
ANCHIL HOUSE, PUNNAPRA MURI, PUNNAPRA VILLAGE,
ALAPPUZHA - 688 003.**
- 7. THRESSIAMMA PATHROSE, AGED 62 YEARS,
POONTRASSERRY (ANCHIL HOUSE), PUNNAPRA MURI,
PUNNAPRA VILLAGE, ALAPPUZHA - 688 003.**

**THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON
09-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

amk

A.HARIPRASAD, J.

R.S.A No.550 of 2015

Dated this the 9th day of June, 2015.

J U D G M E N T

First defendant in O.S No.1120/2001 on the file of the Additional Munsiff Court, Alappuzha, who suffered a decree, had preferred an appeal before the Court of the District Judge, Alappuzha as A.S No.56/2012. The lower appellate court after considering the matter confirmed the decree passed by the trial court and dismissed the appeal. Aggrieved by the dismissal of the appeal, by the first defendant has come up in this regular second appeal.

2. Heard the learned counsel for the appellant. I have perused the impugned judgments.

3. One of the main grievances raised by the appellant is that the court below directed delivery of plaint schedule property when there was no prayer in the original suit for recovery of possession of the same. I have carefully gone through the decreetal portion of the trial court's judgment which was confirmed in appeal by the lower appellate court. I am unable to

find any direction passed by the trial court allowing recovery of possession of the property described in the plaint schedule or any portion thereof. Reliefs granted by the courts below are only relating to declaration, fixation of boundary and permanent prohibitory injunction. Learned counsel for the appellant submitted that the plaintiffs/decreed holders are taking hectic steps to execute the decree as if it is a decree for recovery of possession. I have no hesitation to hold that in the absence of any such direction in the decree in question, it cannot be put to execution for recovery of possession.

4. On going through the lower court judgments and the appeal memorandum and after hearing the learned counsel for the appellant, I find no substantial question of law arising in this appeal. The appeal is devoid of any merit. Hence, the regular second appeal is dismissed.

All pending interlocutory applications will stand dismissed.

Sd/-
A.HARIPRASAD,
JUDGE.