

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

MONDAY, THE 30TH DAY OF NOVEMBER 2015/9TH AGRAHAYANA, 1937

RSA.No. 637 of 2015 ()

**AS 47/2013 of ADDL. DISTRICT COURT -- II KOZHIKODE DATED 31-03-2015
OS 148/2012 of SUB COURT, KOYILANDY DATED 31-01-2013**

APPELLANTS/APPELLANTS/DEFENDANTS :

- 1. SREEDHARAN, AGED 63 YEARS, S/O CHERIYAKKAN,
RESIDING AT PADINHARE NADUKKANDI HOUSE,
KOYILANDY TALUK, THIKKODY VIA
MELADI KOZHIKODE DISTRICT.**
- 2. VASANTHA, AGED 50 YEARS, W/O. SREEDHARAN
RESIDING AT PADINHARE NADUKKANDI HOUSE,
KOYILANDY TALUK, THIKKODY VIA,
MELADI KOZHIKODE DISTRICT.**
- 3. SHANI, AGED 27 YEARS, D/O. SREEDHARAN,
RESIDING AT PADINHARE NADUKKANDI HOUSE,
KOYILANDY TALUK, THIKKODY VIA,
MELADI KOZHIKODE DISTRICT.**
- 4. NISHEED, AGED 23 YEARS, S/O. SREEDHARAN
RESIDING AT PADINHARE NADUKKANDI HOUSE,
KOYILANDY TALUK, THIKKODY VIA,
MELADI KOZHIKODE DISTRICT.**

**BY ADVS.SRI.N.M.JAMES
SRI.T.MADHU**

RESPONDENTS/RESPONDENTS/PLAINTIFFS :

- 1. RATHI KUNHIRAMAN, AGED 70 YEARS,
W/O. LATE KUNHIRAMAN
RESIDING AT PADINHARE NADUKKANDI HOUSE,
THRIKOTTOOR AMSOM, KOYILANDY TALUK, THIKKODY VIA
MELADI, KOZHIKODE DISTRICT-673522.**
- 2. RAMESH KUNHIRAMAN, AGED 52 YEARS, S/O KUNHIRAMAN
RESIDING AT PADINHARE NADUKKANDI HOUSE
THRIKOTTOOR AMSOM, KOYILANDY TALUK, THIKKODY VIA
MELADI, KOZHIKODE DISTRICT-673522.**

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3. RAJITHA SATHEESH, AGED 48 YEARS,
D/O. LATE KUNHIRAMAN
RESIDING AT PADINHARE NADUKKANDI HOUSE,
THRIKOTTOOR AMSOM, KOYILANDY TALUK, THIKKODY VIA
MELADI, KOZHIKODE DISTRICT-673522.

R2 BY ADVS. SRI.T.C.SURESH MENON
SRI.P.S.APPU
SRI.A.R.NIMOD

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION
ON 30-11-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

bp

P.B.SURESH KUMAR, J.

R.S.A.No.637 of 2015

Dated this the 30th day of November, 2015

JUDGMENT

The defendants in a suit for injunction, both mandatory and prohibitory, are the appellants in this second appeal.

2. The suit property belonged to the predecessor of the plaintiffs namely, Kunhiraman. The first defendant is the brother of Kunhiraman. The remaining defendants are the wife and children of the first defendant. The case of the plaintiffs is that the first defendant, who is permitted to occupy the building in the plaint schedule property has refused to surrender vacant possession of the building. The defendants resisted the suit. They have not disputed the title of the plaintiffs over the suit property. On the other

hand, they contended that they have perfected title to the suit property by adverse possession and limitation. The trial court accepted the case of the plaintiffs and decreed the suit. Though the matter was taken up in appeal by the defendants, the appellate court confirmed the decision of the trial court and hence this second appeal by the defendants.

3. Heard the learned counsel for the appellants as also the learned counsel for the respondents.

4. As noticed above, the title of the plaintiffs over the suit property is not disputed by the defendants. The contention of the defendants is only that they have perfected title to the suit property by adverse possession and limitation. According to me, the question whether the defendants have perfected title to the suit property by adverse possession and limitation does not arise for consideration in a suit for injunction. In a suit for injunction what is to be seen by the court is as to whether the case set

up by the plaintiffs that they are in possession of the suit property is correct. The courts below found concurrently that the transaction between the parties was as pleaded by the plaintiffs. The said finding being on a pure question of fact, I do not find any justification to interfere with the impugned decisions. The second appeal, in the circumstances, is devoid of merits and the same is accordingly dismissed. All the interlocutory applications in the appeal are closed.

P.B.SURESH KUMAR, JUDGE.

smm