

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

TUESDAY, THE 7TH DAY OF JULY 2015/16TH ASHADHA, 1937

RSA.No. 675 of 2015

AGAINST THE JUDGMENT IN AS 93/2011 of ADDITIONAL DISTRICT COURT, TIRUR

AGAINST THE JUDGMENT IN OS 103/2001 of MUNSIFF COURT, PARAPPANANGADI

APPELLANT/APPELLANT/PLAINTIFF:

**SHOUKATHALI, AGED 58 YEARS,
S/O.POOVANNURU KOYA, CHERUKAVU AMSOM,
PUTHUPADAM DESPM, ERNAD TALUK, MALAPPURAM DISTRICT.**

**BY ADVS.SRI.T.K.AJITH KUMAR
SRI.P.VINODKUMAR
SRI.K.T.SIDHIQ
SMT.M.A.JINSA MOL**

RESPONDENTS/RESPONDENTS/DEFENDANTS:

- 1. CHERATHODI AVARANKUTTY'S SON KAMMU,
AGED 62 YEARS, CHERUKAVU AMSOM, PARAVUR DESOM,
ERNAD TALUK, AIKKARAPPADI (PO), MALAPPURAM DISTRICT
PIN: 673 637.**
- 2. AYISHABEEVI, W/O. CHERATHODI KAMMU,
AGED 56 YEARS, CHERUKAVU AMSOM, PARAVUR DESOM,
ERNAD TALUK, AIKKARAPPADI (PO), MALAPPURAM DISTRICT
PIN: 673 637.**
- 3. UMMER KOYA, S/O. CHERATHODI KAMMU,
AGED 35 YEARS, CHERUKAVU AMSOM, PARAVUR DESOM,
ERNAD TALUK, AIKKARAPPADI (PO), MALAPPURAM DISTRICT
PIN: 673 637.**
- 4. MUSTHAFA, S/O. CHERATHODI KAMMU,
AGED 33 YEARS, CHERUKAVU AMSOM, PARAVUR DESOM,
ERNAD TALUK, AIKKARAPPADI (PO), MALAPPURAM DISTRICT
PIN: 673 637.**

**THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON
07-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

AS

A.HARIPRASAD, J.

R.S.A.No.675 of 2015

Dated this the 7th day of July, 2015

J U D G M E N T

Appellant is the plaintiff in a suit for permanent prohibitory injunction. Plaint A schedule property was belonging to the plaintiff and his elder brother. In the year 1979, they partitioned plaint A and B schedule items which are part and parcel of item No.8 in Ext.A1 partition deed. Later, a road was developed through the western side of the properties. O.S.No.66 of 1997 is a suit filed earlier in respect of the properties. Commission was taken out in the earlier suit for revealing the identity of the properties. A portion of land situated on the western side of the road, which was shown as B schedule, was assigned to first defendant in the year 1985, as per Ext.B1. It is the case of the plaintiff that plaint A schedule property is situated within well defined boundaries and secured by compound walls. Defendants have no manner of right or possession over the properties. O.S.No.66 of 1997, a suit

filed by the first defendant in this case, was contested by the plaintiff and ultimately it was dismissed as not pressed. Therefore, the defendants have no right over plaint A schedule property and no possession thereon.

2. The defendants resisted the plaint claim contending that the plaintiff had assigned western portion of plaint A schedule property to the 1st defendant, as per Ext.B1. An extent of 5 5/6 cents of land was assigned to the first defendant by the plaintiff. The description in Ext.B1 sale deed does not match with the description in plaint B schedule. Plaint B schedule property does not form part of the house compound of the defendants. The Commissioner's report and sketch is incapable of identifying neither plaint B schedule property nor the property claimed by the defendants. Therefore, the defendants contended that the plaintiff is not entitled to get any relief.

3. The courts below on appreciation of evidence concurrently found that the plaintiff failed to identify plaint A schedule property and also failed to establish

possession over plaint A schedule property for claiming a prohibitory injunction decree. The finding of the trial court in this regard was confirmed by the lower appellate court. These matters have become final as those findings are based on evidence adduced before the courts below. The lower appellate court further found that the appellant/plaintiff did not establish the case pleaded in the plaint. According to the lower appellate court, the evidence adduced improbably disproves the case of the plaintiff that plaint B schedule is a property situated on the western side of the road and it lies on the western side of plaint A schedule. The lower appellate court placed reliance on certain purchase certificates produced by the respondents to negative the contention raised by the plaintiff. The learned counsel for the appellant contended that those documents are not pertaining to plaint B schedule property and they related to some other property situated far away. However, fact remains that the identity of the property was not established by the plaintiff correctly. Hence, the suit for injunction was rightly

dismissed.

It is seen that the plaintiff sets up a definite title in respect of the property shown in plaint A schedule. The decree in a suit for prohibitory injunction certainly will not be a bar to establish the contention of the plaintiff on the basis of title to the property in an appropriate proceeding. I find no substantial question of law arising in this appeal. Hence, this appeal is dismissed.

Sd/-
A.HARIPRASAD, JUDGE.

AS

/True Copy/

P.A. to Judge