

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

FRIDAY, THE 13TH DAY OF NOVEMBER 2015/22ND KARTHIKA, 1937

RSA.No. 677 of 2015

**AS 88/2014 OF SUB COURT, CHAVAKKAD, DATED 23-01-2015
OS 854/2002 OF MUNSIF COURT, CHAVAKKAD DATED 17-11-2011**

APPELLANT(S)/APPELLANT/DEFENDANT:

**PRINCE V. MATHEW, AGED 40 YEARS,
S/O.VADAKKAN MATHAPPAN, THEKKEPURAM,
KUNNAMKULAM VILLAGE, THALAPPILLY TALUK,
THRISSUR DISTRICT.**

BY ADV. SRI.K.A.SATHEESA BABU

RESPONDENT(S)/RESPONDENT/PLAINTIFF:

**THANKAMMA MATHIRI, AGED 75 YEARS,
W/O.PULIKKOTTIL VAREED, KULLUMPURATHANGADI,
KADAVALLUR VILLAGE AND DESOM, THALAPPILLY TALUK,
THRISSUR DISTRICT. THE PRESENT ADDRESS
IS (THANKAMMA MATHIRI,
W/O.PUKKKOTTIL VAREED, PULIKKOTTIL HOUSE, PALACE ROAD,
KUNNAMKULAM P.O. -680 503).**

**THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION
ON 13-11-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

PJ

P.B.SURESH KUMAR, J.

R.S.A.No.677 of 2015

Dated this the 13th day of November, 2015

JUDGMENT

The defendant in a suit for injunction is the appellant in this second appeal.

2. The case of the plaintiff is that she had obtained the plaint schedule properties by virtue of Ext.A3 sale deed and that she is in possession of the same. According to the plaintiff, the defendant is attempting to trespass into the plaint schedule properties and hence the suit. The defendant contended that he is in possession of 70 cents out of the plaint schedule properties and therefore, the plaintiff is not entitled to the relief sought in the suit. According to the defendant, the plaintiff has enclosed the the said 70 cents along with her remaining properties after the institution of the suit, by erecting a barbed wire fencing. The trial court found that the plaintiff has established possession over

the suit properties. Consequently, the suit was decreed as prayed for. The defendant had though taken up the matter in appeal, the appellate court, on a re-appraisal of the evidence on record, confirmed the decision of the trial court. The defendant has thus come up in this second appeal challenging the concurrent decisions against him.

3. Heard the learned counsel for the appellant.

4. As noticed above, the suit is one for injunction simplicitor. The only question to be considered by the court in a suit of this nature is as to whether the plaintiff is in possession of the suit property. The plaintiff has produced Ext.A3 document to establish her possession over the suit properties. The defendant who claimed that he is in possession of a portion of the suit properties has not adduced any acceptable evidence to substantiate his case, except his assertion that the plaintiff has enclosed with her properties 70 cents of property in his possession after the institution of the suit. The courts below have concurrently found that the defendant could not establish the said case. In the said circumstances, it cannot be said that the courts below went wrong in holding that the plaintiff is in possession of

the plaint schedule properties. That apart, the question as to possession is a pure question of fact, the decision on which cannot be challenged in a second appeal filed under Section 100 of the Code of Civil Procedure.

There is, therefore, no merit in the second appeal and the same is, accordingly, dismissed in limine. However, it is made clear that the impugned decisions will not preclude the defendant from instituting a suit for recovery of possession based on title.

P.B.SURESH KUMAR, JUDGE.

smm