

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

TUESDAY, THE 8TH DAY OF SEPTEMBER 2015/17TH BHADRA, 1937

RSA.No. 703 of 2015 ()

**AGAINST THE JUDGMENT & DECREE IN AS.NO. 192/2011
OF III ADDL. DISTRICT COURT, PALAKKAD DATED 10-12-2014
AGAINST THE JUDGMENT & DECREE IN OS.NO. 88/2000 OF ADDL.MUNSIFF COURT,
PALAKKAD DATED 30-03-2011**

APPELLANT/APPELLANT/DEFENDANT :

**K. RAJAN
S/O. KUNCHUNNI, AGED 58 YEARS
RESIDING AT KOZHIPARA
VADAKARAPATHY VILLAGE,
CHITTUR TALUK, PALAKKAD DISTRICT.**

**BY ADVS.SRI.T.C.SURESH MENON
SRI.P.S.APPU**

RESPONDENT/RESPONDENT/PLAINTIFF :

**PUDUSSERY GRAMA PANCHAYATH
REPRESENTED BY ITS SECRETARY, PUDUSSERY P.O.
PALAKKAD - 678 007.**

**THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION
ON 08-09-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

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P.B.SURESH KUMAR, J.

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R.S.A.No.703 of 2015.

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Dated this the 8th day of September, 2015.

J U D G M E N T

The defendant in the suit is the appellant.

2. The plaintiff is a Grama Panchayat. The case of the plaintiff is that they have obtained title and possession over the suit property by virtue of Ext.A2 sale deed executed by one Nayomi Karunakaran and that the defendant has trespassed into the said property on the strength of Ext.B1 sale deed obtained by him from one P.Balasundaram. The suit was initially one for injunction. Later, a prayer for recovery of possession based on title was also incorporated. The defendant asserted title to the suit property on the strength of Ext.B1 sale deed.

3. The trial court found that the vendor of the plaintiff Nayomi Karunakaran had obtained the property from Balasundaram, the vendor of the defendant and that

Balasundaram had only an extent of 6.16 cents of land in survey No.1255/3. The trial court also found that out of the said 6.16 cents, 0.79 cents of land has become part of the road and after having sold 5 cents out of the balance, Balasundaram had only 0.37 cents of land when he executed Ext.B1 sale deed in favour of the defendant. Consequently, the trial court found that the vendor of the defendant had no title at all to the property conveyed to him as per Ext.B1 sale deed. It is on that basis, the trial court decreed the suit and the decision of the trial court has been confirmed by the appellate court.

4. Heard the learned counsel for the appellant.

5. The following are the substantial questions of law framed in the Second Appeal:

(i) Whether the courts below were justified in ignoring B1 sale deed which has been duly executed by the vendor who had clear marketable title?

(ii) Whether the courts below were correct in law in dismissing the claim for adverse possession pleaded by the appellant?

(iii) Whether the judgments in the courts below are correct on the face of record in regard to the finding as to the declaration of title?

In the light of the findings rendered by the courts below that vendor of the defendant had no title to the property conveyed to the defendant, questions 1 and 3 do not arise for consideration. As far as question No.2 is concerned, as noticed above, the defendant has not admitted the title of the plaintiff over the suit property. Instead, he was asserting title over the same on the strength of Ext.B1 sale deed. The defendant who is not admitting the title of the plaintiff over the suit property is not entitled to claim adverse possession over the same. In the said view of the matter, there is no merit in the Second Appeal and the same is, accordingly, dismissed in limine. All the interlocutory applications in the appeal are dismissed.

**Sd/-
P.B.SURESH KUMAR,
JUDGE.**

Kvs/-

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PA TO JUDGE.