

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

THURSDAY, THE 26TH DAY OF NOVEMBER 2015/5TH AGRAHAYANA, 1937

R.S.A.No. 175 of 2014 (D)

**AGAINST THE JUDGMENT AND DECREE DATED 29.08.2013 IN A.S No.52/2010 ON THE
FILE OF ADDITIONAL SUB COURT, IRINJALAKUDA FROM O.S. No.1761/2007 DATED
10.02.2010 ON THE FILE OF THE PRL. MUNSIF COURT, IRINJALAKUDA**

APPELLANT/APPELLANT/PLAINTIFF:

**SHANMUGHAN, AGED 57 YEARS,
S/O.ALOPPADY KUMARAN, PERUMBADAPPU DESOM,
CHENTHRAPPINNI P.O., KODUNGALLUR TALUK,
TRICHUR - 680 687.**

**BY ADVS. SRI. T.M. CHANDRAN
SRI. S. SUJITH**

RESPONDENT(S)/RESPONDENTS/DEFENDANTS:

- 1. SIDHIQUE, AGED 67 YEARS,
S/O. POKKAKKILLATH KUNJIBAVA,
KATTOOR VILLAGE AND DESOM, MUKUNDAPURAM TALUK,
TRICHUR - 680 702.**
 - 2. BABY, AGED 55 YEARS,
W/O. ALOPPADY BABU, CHENTHRAPPINNI VILLAGE AND DESOM,
KODUNGALLUR TALUK, TRICHUR - 680 687.**
 - 3. GEORGE, AGED 57 YEARS,
S/O. CHERIAN VATHU KUNJU VAREED, ARIPPALAM DESOM,
POOMANGALAM VILLAGE, MUKUNDAPURAM TALUK,
TRICHUR -,680 688.**
 - 4. THRISSUR GENERAL ENGINEERING CLUSTER
REPRESENTED BY MANAGING PARTNER,
THRISSUR GENERAL ENGINEERING CLUSTER,
PERINJANAM VILLAGE, KODUNGALLUR,
TRICHUR DISTRICT - 680 686.**
- R1 BY ADV. SRI.T.H.ABDUL AZEEZ
R2 BY ADV. SRI.K.S.BHARATHAN
R3 BY ADV. SRI.RAJESH CHAKYAT**

**THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON
26-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

P.B.SURESH KUMAR, J.

R.S.A. No.175 of 2014

Dated this the 26th day of November, 2015

JUDGMENT

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

2. The plaint schedule property belongs to the plaintiff and two others. The one-third right of the plaintiff over the plaint schedule property was attached and sold for recovery of his Sales Tax arrears, under the Kerala Revenue Recovery Act. The first defendant is the purchaser of the one-third right of the plaintiff in the revenue sale. Defendants 2 to 4 are persons claiming under the first defendant. The case of the plaintiff is that though his one-third right in the suit property was sold in revenue sale, he is still in possession of the suit property. He also contended that the proceedings for sale of his property under the Revenue Recovery Act has been challenged by him and the matter is now pending before this Court in W.A.No.585 of 2015. He, therefore, claimed a decree of permanent prohibitory injunction restraining the defendants from entering

into the plaint schedule property, committing waste therein or alienating or encumbering the same. The trial court dismissed the suit and the decision of the trial court has been confirmed in appeal. Aggrieved by the concurrent decisions against him, the plaintiff has thus come in this second appeal.

3. Heard the learned counsel for the appellant.

4. The learned counsel for the appellant contended that the first defendant has not obtained possession of the suit property in accordance with the provisions of the Kerala Revenue Recovery Act and that therefore, the plaintiff is entitled to the decree sought by him. The relief of injunction is a discretionary relief. Going by the admitted case, the plaintiff has no subsisting right in the property. Of course, he has a case that the sale proceedings under the Revenue Recovery Act has not become final and the matter is still pending before this Court in W.A.No.585 of 2015. In so far as it is conceded that his rights over the suit property has already been sold in a revenue sale, I do not think that it is a case where the plaintiff can seek the discretionary relief of injunction against the person who purchased the right of the plaintiff. In the said view of the matter, I do not find any merit in the second appeal and the same

is, accordingly, dismissed. It is, however, made clear that the dismissal of the second appeal will not stand in the way of the plaintiff prosecuting W.A.No.585 of 2015 pending before this Court. All the interlocutory applications in the appeal are closed.

SD/-
P.B. SURESH KUMAR,
JUDGE

JV