

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

MONDAY, THE 14TH DAY OF DECEMBER 2015/23RD AGRAHAYANA, 1937

RSA.No. 1000 of 2015 (B)

**(AGAINST THE JUDGMENT AND DECREE IN AS.NO. 27/2014 OF SUB COURT,
THIRUVALLA DATED 10-02-2015)**

**(AGAINST THE JUDGMENT AND DECREE IN OS.NO. 380/2011 OF MUNSIF COURT,
THIRUVALLA DATED 08-04-2014)**

APPELLANT/APPELLAN/1ST PLAINTIFF:

**N.S.VALSALAKUMARI, AGED 60 YEARS,
W/O. SIVARAMAN NAIR, PALAKKAMALAYIL (SREYAS),
KATTODU, MANJADI P.O., THIRUVALLA,
PATHANAMTHITTA DISTRICT.**

BY ADV. SRI.S.SHARAN

RESPONDENTS/RESPONDENTS/DEFENDANTS/2ND PLAINTIFF:

- 1. KAVIYOOR GRAMA PANCHAYATH,
REP. BY ITS SECRETARY, KAVIYOOR,
PATHAMANTHITTA-689 582.**
- 2. T.K.SAJEEV,
PRESIDENT, KAVIYOOR GRAMA PANCHAYAT, KAVIYOOR,
THIRUVALLA TALUK, PATHANAMTHITTA DISTRICT-689 582.**
- 3. SIVARAMAN NAIR, AGED 65 YEARS,
S/O. MADHAVAN NAIR, PALAKKAMALAYIL (SREYAS),
KATTODU, MANJADI P.O., THIRUVALLA,
PATHANAMTHITTA DISTRICT-689 105.**
- 4. M.RADHAKRISHNAN,
UNNATHANIL JAYANTH (H), PERIYAR NAGAR,
THOTTAKKATTUKARA P.O., ALUVA,
ERNAKULAM DISTRICT-683 108.**

**R1 & R2 BY SRI.VARGHESE M.EASOW,SC,KAVIYOOR GRAMA PANCHAYATH
R4 BY ADVS. SRI.T.P.PRADEEP
SRI.P.K.SATHEES KUMAR**

**THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION
ON 14-12-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

sts

P.B.SURESH KUMAR, J.

R.S.A.No.1000 of 2015

Dated this the 14th day of December, 2015

JUDGMENT

The first plaintiff in a suit for declaration of title and injunction is the appellant in this second appeal.

2. The suit was in respect of four items of properties, of which the plaintiffs claimed title over items 3 and 4 by adverse possession and limitation. The trial court decreed the suit in part, granting relief to the plaintiffs in respect of items 1 and 2 properties and declining relief to them in respect of items 3 and 4 properties. The second plaintiff took 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 second plaintiff who preferred the appeal challenging the decision of the trial court did not challenge the decision of the appellate court. On the other hand, the first plaintiff who did not challenge the decision of the trial court in appeal has come up in this second appeal challenging the decision of the appellate court in the appeal preferred by the second plaintiff.

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

4. In the judgment in R.S.A.No.726 of 2014, I have held that a party who has not challenged the decision of the trial court in appeal cannot prefer a second appeal challenging the decision of the trial court as confirmed in the appeal at the instance of another party to the suit. Further on merits, as stated above, the case of the plaintiffs is that they have perfected title to the plaint items 3 and 4 by adverse possession and limitation. In **Mohini v. Thimmappa**

[2015 (5) KHC 48], this Court has held that a suit for declaration of title is not maintainable based on a plea of adverse possession.

In the said view of the matter, there is no merit in the second appeal and the same is accordingly dismissed. All the interlocutory applications in the appeal are closed.

P.B.SURESH KUMAR, JUDGE.

smm