

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

TUESDAY, THE 13TH DAY OF OCTOBER 2015/21ST ASWINA, 1937

RSA.No. 1056 of 2015 (A)

**AGAINST THE JUDGMENT IN AS. NO.10/2005 OF SUB COURT, SULTHAN BATHERY
DATED 08-01-2015.**

**AGAINST THE JUDGMENT IN OS. NO.154/2001 OF MUNSIF MAGISTRATE COURT,
MANANTHAVADY DATED 30-10-2004.**

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APPELLANT/APPELLANT/DEFENDANT NO.2:

**VALLI MAMI, AGED 50 YEARS,
D/O.KUNHAMAD HAJI, KOTTATHARA P.O.,
KOTTATHARA AMSOM, VYTHIRI TALUK,
WAYANAD DISTRICT.**

BY ADV. SRI.S.M.PRASANTH.

RESPONDENTS/PLAINTIFFS/RESPONDENTS:

- 1. MOHAMMED YOUSUF, AGED 62 YEARS,
S/O.MOHAMMED ISHAQ, PENSIONER.**
- 2. MOHAMMED HUSSAIN, AGED 61 YEARS,
S/O.MOHAMMED ISHAQ.**
- 3. FATHIMA, MOHAMMED HUSSAIN,
AGED 68 YEARS, D/O.MOHAMMED ISHAQ.**
- 4. MUHAMMED ABDULLA, AGED 52 YEARS,
S/O.MOHAMMED ISHAQ.**
- 5. MOHAMMED ABDURAHIMAN, AGED 50 YEARS,
S/O.MOHAMMED ISHAQ.**
- 6. JAINABEE,
W/O.MOHAMMED ISHAQ, AGED 48 YEARS,**

**(ALL ARE RESIDING IN HOPE COTTAGE,
PANDARIMADAM, KOOARAPURA ROAD, THALASSERY,
KANNUR DISTRICT, REPRESENTED BY THEIR POWER OF
ATTORNEY HOLDER THE THIRD PLAINTIFF MOHAMMED HUSSAIN),
PIN-673 576.**

- 7. K.V. KUNHAMMED HAJI, AGED 75 YEARS,
POST VALAD, VALAD AMSOM DESOM,
MANANTHAVADY TALUK, WAYANAD DISTRICT-673 576.**
- 8. SAKEENABAI, AGED ABOUT 65 YEARS,
W/O.MOHAMMED ABDUL GAFOOR, HOPE COTTAGE,
PANDARIMADAM, KOOARAPURA ROAD, THALASSERY,
KANNUR, KERALA, INDIA-674 576.**
- 9. BEENA BAJI, AGED 52 YEARS,
D/O.MOHAMMED ABDUL GAFOOR, HOPE COTTAGE,
PANDARIMADAM, KOOARAPURA ROAD, THALASSERY,
KANNUR, KERALA, INDIA-674 576.**
- 10. MUHAMMED ARIF, AGED 56 YEARS,
S/O.MOHAMMED ABDUL GAFOOR, HOPE COTTAGE,
PANDARIMADAM, KOOARAPURA ROAD, THALASSERY,
KANNUR, KERALA, INDIA-674 576.**
- 11. RAHIM, AGED 51 YEARS,
S/O.FATHIMA, HOPE COTTAGE, PANDARIMADAM,
KOOARAPURA ROAD, THALASSERY, KANNUR,
KERALA, INDIA-674 578.**

R2 & R5 BY ADV. SRI.C.KHALID.

**THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION
ON 13-10-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

rs.

P.B.SURESH KUMAR, J.

R.S.A.No.1056 of 2015

Dated this the 13th day of October, 2015

JUDGMENT

The second defendant in a suit for recovery of possession is the appellant in this second appeal.

2. The case of the plaintiffs is that their predecessor Mohammad Ishaq purchased the suit property in a court auction and as he was not able to obtain the possession of the suit property through the process of the execution court, he filed a suit as O.S.No.4 of 1988 for recovery of possession of the suit property from the person whose rights he had purchased in the court auction. According to the plaintiffs, O.S.No.4 of 1988 was decreed ex-parte and in execution of the said decree, Mohammad Ishaq obtained delivery of the property on 8.6.1989. It is also the case of the plaintiffs that during 2001, when one of the plaintiffs visited the suit property, it was found that the

second defendant has trespassed into the suit property and hence the suit.

3. The second defendant resisted the suit, contending that she is in possession of the suit property from the year 1966 onwards and that she has not been dispossessed at any point of time from the suit property. According to her, the suit property was obtained by her from her mother. Alternatively, the second defendant contended that if at all the plaintiffs have any right in the suit property, the same is lost by her adverse possession.

4. The trial court rejected the contention of the second defendant and decreed the suit. In appeal, on a reappraisal of the evidence on record, the appellate court confirmed the decision of the trial court. The second defendant who is aggrieved by the concurrent decisions against her has thus come up in the second appeal.

5. Heard the learned counsel for the appellant.

6. According to the learned counsel for the appellant, there is absolutely no material to establish that the second

defendant has been dispossessed from the suit property pursuant to the decree obtained by the predecessor of the plaintiffs in O.S.No.4 of 1988.

7. The fact that the suit property was purchased by the predecessor of the plaintiffs Mohammad Ishaq in a court auction pursuant to the decree in O.S.No.238 of 1972 is not in dispute. Likewise, the fact that Mohammad Ishaq had subsequently instituted a suit and obtained a decree for recovery of possession of the suit property from its previous owner is also not in dispute. The contention of the second defendant is only that pursuant to the decree in the subsequent suit, Mohammad Ishaq has not obtained possession of the property. According to the second defendant, she was holding possession of the property right from the year 1966 and there was no occasion for Mohammad Ishaq to get possession of the property pursuant to the decree in the subsequent suit. The fact that the property originally belonged to the first defendant, the judgment debtor in O.S.No.238 of 1972 is not in dispute. Though the second defendant contends that she

obtained property from her mother, there is no case in the written statement that the property does not belong to the first defendant. As such, there is no issue relating to the title to the suit property. Then the only question is as to whether the second defendant has established possession over the suit property. Both the courts below found, based on the materials on record, that Mohammad Ishaq obtained possession of the property and the second defendant has subsequently trespassed into the property. Even assuming that the plaintiffs have failed to establish that they have obtained possession of the suit property pursuant to the decree in O.S.No.4 of 1988, the present suit being a suit on title, at any rate, the plaintiffs are entitled to a decree.

8. Coming to the plea of adverse possession, it is now settled that a plea of adverse possession can be raised only by a person who admits the title of the real owner. A perusal of the written statement filed by the second defendant does not indicate that she admits the title of the plaintiffs over the suit property. Further it is seen that the plea of adverse possession is taken

alternatively. It is also settled that a plea of adverse possession cannot be raised alternatively in a suit by a person who does not admit the title of the true owner [see **George v. Balakrishnan** (2014 (4) KLT 788)].

There is, therefore, 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