

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

TUESDAY, THE 3RD DAY OF NOVEMBER 2015/12TH KARTHIKA, 1937

RSA.No. 1095 of 2015

**AS 135/2007 OF SUB COURT, KOTTARAKKARA, DATED 01-06-2015
OS 263/2005 OF MUNSIFF'S COURT, PUNALUR, DATED 22-02-2007**

APPELLANT(S)/RESPONDENTS/PLAINTIFF:

- 1. LEELAMMA,
W/O JOSE, KUDIL PURAUIDOM VEEDU, EDAPALAYAM,
ARYANKAVU VILLAGE, PATHANAPURAM TALUK.**
- 2. ABRAHAM @ JOSE,
KUDIL PURAUIDOM VEEDU, EDAPALAYAM, ARYANKAVU VILLAGE,
PATHANAPURAM TALUK.**

**BY ADVS.SRI.PHILIP T.VARGHESE
SRI.THOMAS T.VARGHESE
SMT.ACHU SUBHA ABRAHAM
SMT.SUNANDA SUKUMARAN
SMT.K.R.MONISHA
SMT.CHITHRA CHANDRASEKHARAN
SMT.SYAMA SIDHARTHAN**

RESPONDENT(S)/APPELLANTS/DEFENDANTS:

- 1. STATE OF KERALA,
REPRESENTED BY THE CHIEF SECRETARY,
GOVERNMENT OF KERALA, SECRETARIAT,
THIRUVANANTHAPURAM-695 001.**
- 2. THE DIVISIONAL FOREST OFFCER.
THENMALA, KOLLAM 691 308.**
- 3. THE FOREST RANGE OFFICER.
ARYANKAVU, KOLLAM 691 316.**

BY SRI.M.P.MADHAVANKUTTY, SPECIAL GOVT. PLEADER

**THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON
03-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

P.B.SURESH KUMAR, J.

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R.S.A.No.1095 of 2015.

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Dated this the 3rd day of November, 2015.

J U D G M E N T

The plaintiffs in a suit for injunction are the appellants in this second appeal.

2. The suit property is part of the reserve forest of the State. The plaintiffs have 20.23 Ares of property adjoining to the suit property. According to the plaintiffs, they are in possession of the suit property as well and are doing cultivation therein for more than 50 years. The relief claimed in the suit was a decree of permanent prohibitory injunction restraining the State and the officials of the Forest Department of the State from interfering with the possession of the plaintiffs over the suit property. The defendants resisted the suit. According to the State, the suit property being a portion of the reserve forest, the

plaintiffs cannot claim possession over the same. The trial court accepted the case of the plaintiffs and decreed the suit. However, in appeal, the appellate court reversed the decision of the trial court and dismissed the suit. The plaintiffs who are aggrieved by the decision of the appellate court have thus come up in this second appeal.

3. Heard the learned counsel for the appellants.

4. The learned counsel for the appellants, relying on the report of the Advocate Commissioner, pointed out that there are cultivations in the suit property and the cultivations in the property assigned to them would indicate that they are in possession of the suit property. The question as to whether the plaintiffs have established their possession over the suit property is a pure question of fact. The appellate court, on a reappraisal of the materials on record, found that the plaintiffs have not established the possession over the suit property. The said factual finding of the appellate court cannot be interfered with by this

Court in a second appeal filed under Section 100 of the Code of Civil Procedure, especially when the suit property is part of the reserve forest of the State. The second appeal, in the circumstances, is devoid of merits and the same is, accordingly, dismissed. All the interlocutory applications in the appeal are closed.

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

Kvs/-

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PA TO JUDGE.