

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

WEDNESDAY, THE 28TH DAY OF OCTOBER 2015/6TH KARTHIKA, 1937

RSA.No. 1122 of 2015 ()

**(AGAINST THE JUDGMENT IN AS.NO. 13/2011 OF DISTRICT COURT, MANJERI
DATED 12-12-2014)**

**(AGAINST THE JUDGMENT IN OS.NO. 118/2008 OF MUNSIF MAGISTRATE COURT,
PERINTHALMANNA DATED 21-12-2010)**

APPELLANT/APPELLANT/DEFENDANT :

**E.K.UMMER,
S/O. KUNUMOIDU HAJI,AGED 51 YEARS,
ERAKKADAVATHU HOUSE,
ANAMANGAD AMSOM, MUZHANNAMANNA DESOM,
PERINTHALMANNA TALUK, MALAPPURAM DISTRICT.**

**BY ADVS.SRI.A.A.ZIYAD RAHMAN
SRI.LAL K. JOSEPH
SRI.V.S.SHIRAZ BAVA
SRI.ANSAR.K.H.**

RESPONDENT(S)/RESPONDENTS/PLAINTIFFS :

- 1. RAYINKUTTY HAJI,
S/O. MOIDEENKUTTY HAJI, AGED 67 YEARS,
RESIDING AT PARAVENGAL HOUSE,
PONMALA AMSOM DESOM, ERNAD TALUK.**
- 2. ABDUL KAREEM HAJI, AGED 61 YEARS,
S/O. MOIDEENKUTTY HAJI, RESIDING AT PARAVENGAL HOUSE,
PONMALA AMSOM DESOM, ERNAD TALUK.**

**THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION
ON 28-10-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

P.B.SURESH KUMAR, J.

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R.S.A.No.1122 of 2015

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Dated this the 28th day of October, 2015.

J U D G M E N T

The defendant in a suit for fixation of boundary is the appellant in this Second Appeal.

2. The plaint schedule item No.1 property belongs to the first plaintiff and the plaint schedule item No.2 property belongs to the second plaintiff. According to the plaintiffs, the plaint schedule properties are lying contiguously and that there is no boundary separating the plaint schedule properties and the property of the defendant on its south and hence the suit. The defendant contested the suit. According to the defendant, he is in possession of the plaint schedule properties and the plaintiffs are therefore not entitled to any relief. In the course of the proceedings before the trial court, an Advocate

Commissioner was appointed to locate and identify the plaint schedule properties and its boundaries with reference to the title deeds of the plaintiffs and the Advocate Commissioner submitted Ext.C1 report and Ext.C1(a) plan after identifying the plaint schedule properties. The trial court accepted the case of the plaintiffs and decreed the suit fixing the boundaries of the plaint schedule properties in accordance with Ext.C1(a) plan prepared by the Advocate Commissioner with the aid of a Surveyor. The defendant though took up the matter in appeal, the appellate court on a reappraisal of the evidence on record, confirmed the decision of the trial court. Hence, this Second Appeal by the defendant.

3. Heard the learned counsel for the appellant.

4. The case of the plaintiffs is that the plaint schedule item No.1 property is part of the property acquired by the first plaintiff as per Ext.A1 assignment deed and remaining with him after the sale of the balance effected by him as per document No.4247 of 2008 and plaint schedule item No.2 property is part of the property acquired by the second plaintiff as per Ext.A2 assignment deed and remaining with him after the sale of the balance effected by him as per document No.4248 of

2008. The advocate Commissioner identified the plaint schedule properties with reference to Exts.A1 and A2 assignment deeds of the plaintiffs as also document Nos.4247 and 4248 of 2008 by which portions of the properties covered by Exts.A1 and A2 documents have been sold by the plaintiffs. At the time of inspection, the defendant has produced a photocopy of his title deed before the Advocate Commissioner. The property of the defendant was identified by the Advocate Commissioner with reference to his title deed. Even though the defendant has only 1 acre and 55 cents as per his title deed, the Advocate Commissioner found that he is in possession of 1 acre 83 acres and as per Ext.C1(a) plan, the boundaries of the properties have been fixed leaving 1.83 acres of land to the defendant. The defendant who asserted that he is in possession of the plaint schedule properties and that the fixation of the boundaries of the properties made by the Advocate Commissioner is incorrect, has not adduced any evidence in the suit. He has also not produced his title deed before the court below. In the said view of the matter, the conclusions arrived at by the courts below in the decisions impugned in this Second Appeal cannot be said to be illegal in any manner whatsoever. There is no question of law,

much less any substantial question of law, involved in the Second Appeal and the same is, accordingly dismissed *in limine*. All the interlocutory applications in the appeal are closed.

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

Kvs

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PA TO JUDGE.