

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

MONDAY, THE 30TH DAY OF NOVEMBER 2015/9TH AGRAHAYANA, 1937

RSA.No. 1131 of 2015

**JUDGMENT DATED 31-03-2015 IN AS 15/2008 OF SUB COURT, ATTINGAL
JUDGMENT IN OS 252/2002 OF MUNSIFF COURT, ATTINGAL**
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APPELLANT(S)/APPELLANTS/DEFENDANTS:

1. VIJAYAKUMAR, AGED 55 YEARS,
S/O.GOVINDA PILLAI, RESIDING AT SANTHA MANDIRAM,
VAZHAPPALLY LANE, CHITTATHINKARA DESOM,
AVANAVANCHERRY VILLAGE, ATTINGAL.
2. ANANDAN, AGED 70 YEARS,
S/O.NARAYANAN, RESIDING AT SHEEBALAYAM, KATTIYODE,
VAZHAPPALLY LANE, ATTINGAL.

**BY ADVS.SRI.T.B.THANKAPPAN
SRI.N.KRISHNANKUTTY PILLAI
SRI.T.T.HARIKUMAR
SRI.ASHISH VIDYADHARAN**

RESPONDENT/RESPONDENT/PLAINTIFF:

**SINI, D/O.ANANDAKUMARI,
AGED 41 YEARS, RESIDING AT
CHENAVILA VEEDU, PAZHAYAKUNNUMMEL,
ADAYAMON, THIRUVANANTHAPURAM,
PIN - 695 614.**

**THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON
30-11-2015 ALONG WITH RSA.1145/2015 & RSA.1162/2015 THE COURT ON
THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

P.B.SURESH KUMAR, J.

R.S.A.Nos.1131, 1145 & 1162 of 2015

Dated this the 30th day of November, 2015

JUDGMENT

These appeals arise from the common judgment in A.S.Nos.15 , 17 and 18 of 2008 on the file of the Sub Court, Attingal. Among the said appeals, A.S.No.15 of 2008 is an appeal preferred against the decision in O.S.No.252/2002 and A.S.No.17 of 2008 is an appeal preferred against the decision in O.S.No.168 of 2000. Likewise, A.S.No.18 of 2008 is an appeal preferred against the decision in O.S.NO.209 of 2000. The aforesaid suits on the file of the Munsiff Court, Attingal were tried together treating O.S.No.209 of 2000 as the lead case. As O.S.No.209 of 2000 was treated as the lead case, I am referring to the parties in this judgment as they appear in the said suit.

2. O.S.No.209 of 2000 is a suit for partition. The suit property belonged to Divakaran, the brother of the plaintiff. Defendants 2 to 6 are the siblings of the plaintiff. The first defendant is the daughter of the second defendant who is one of the brothers of the plaintiff. The case of the plaintiff is that Divakaran died unmarried and issueless and as such, he is entitled to 1/6th share in the suit property. It is also his case that the first defendant is claiming title to the suit property based on Ext.B2 sale deed which is invalid. Defendants 2 to 6 remained exparte. The first defendant alone contested the suit. The contention raised by the first defendant was that as per Ext.B2, Divakaran sold the plaintiff schedule property as also another item of property measuring 11 cents to her and that the same is a valid document.

3. During the pendency of O.S.No.209 of 2000, the first defendant filed O.S.No.252 of 2002 seeking declaration

of her title in respect of 11 cents of property covered by Ext.B2 sale deed, which was not the subject matter of O.S.No.209 of 2000. In O.S.No.252 of 2002, the first defendant alleged that the said 11 cents of property is held by one Vijayakumar based on a document executed by the plaintiff. She, therefore, claimed a decree for recovery of possession also from the defendants in the suit who is the plaintiff in O.S.No.209 of 2000 and his transferee namely Vijayakumar.

4. The transferee of the plaintiff in respect of the suit property in O.S.No.252 of 2002 also filed a suit in the meanwhile as O.S.No.168 of 2000 seeking a decree of injunction against the first defendant alleging that he is in possession of the suit property.

5. As noticed above, the suits were tried together. On an appraisal of the materials on record, the trial court found that the plaintiff has not established his case that

Ext.B2 is invalid. Consequently, O.S.No.209 of 2000 was dismissed. Since it is found that Ext.B2 is a valid document, O.S.No.252 of 2002 in respect of the 11 cents of property included therein was decreed. In the light of the decision in 252 of 2002, O.S.No.168 of 2000 was dismissed. The plaintiff and his transferee namely Vijayakumar challenged the decisions in appeal. The appellate court, on an appraisal of the evidence on record, confirmed the decision of the trial court.

6. The plaintiff and his transferee namely Vijayakumar who are aggrieved by the concurrent decisions against them have thus come up in these second appeals.

7. Heard the learned counsel for the appellants.

8. The first defendant is claiming title to the suit property in O.S.No.209 of 2000 as also in O.S.No.252 of 2002 based on Ext.B2 sale deed deed executed by the owner of the property namely Divakaran. The case of the

plaintiff was that Ext.B2 is invalid. The trial court as also the appellate court found on facts that the plaintiff could not established his case that Ext.B2 is invalid. The remaining suits, O.S.Nos.252 of 2002 and 168 of 2000 were decided based on the findings in O.S.No.209 of 2000. Therefore, the only question to be considered is as to whether Ext.B2 is invalid. The question as to whether Ext.B2 is invalid is a pure question of fact. Both the trial court as also the appellate court, based on the materials on record, found that the plaintiff has not established his case that Ext.B2 is invalid.

In the said view of the matter, there is no merit in the second appeals and the same are, accordingly, dismissed.

P.B.SURESH KUMAR, JUDGE.

smm