

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

THURSDAY, THE 29TH DAY OF OCTOBER 2015/7TH KARTHIKA, 1937

RSA.No. 1151 of 2015 ()

**AGAINST THE JUDGMENT & DECREE IN AS.NO. 69/2008
OF SUB COURT, TIRUR DATED 06-07-2015
AGAINST THE JUDGMENT & DECREE IN OS.NO. 20/2006
OF MUNSIF'S COURT, PARAPPANANGADI DATED 30-07-2008**

APPELLANTS/APPELLANTS/DEFENDANTS :

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1. VALIYA KALI
D/O. THAMARAKKUTTY AYYAPPAN,
AGED 65 YEARS, PARIYAPURAM AMSOM
ERNAKARANALLUR DESOM, THIRUR TALUK.
 2. CHAKKI
D/O. THAMARAKKUTTY AYYAPPAN,
AGED 61 YEARS, PARIYAPURAM AMSOM
ERNAKARANALLUR DESOM, THIRUR TALUK.
 3. KUNHADICHI @ RASEENA,
D/O. THAMARAKKUTTY AYYAPPAN,
AGED 58 YEARS, PARIYAPURAM AMSOM
ERNAKARANALLUR DESOM, THIRUR TALUK.
 4. CHERIYA KALI
D/O. THAMARAKKUTTY AYYAPPAN,
AGED 65 YEARS, PARIYAPURAM AMSOM
OTTUPURAM DESOM, THIRUR TALUK
 5. VALLI
D/O. THAMARAKKUTTY AYYAPPAN,
AGED 51 YEARS, PARIYAPURAM AMSOM
ERNAKARANALLUR DESOM, THIRUR TALUK
 6. RAMAN
S/O. THAMARAKKUTTY AYYAPPAN,
AGED 48 YEARS, PARIYAPURAM AMSOM
ERNAKARANALLUR DESOM, THIRUR TALUK

BY ADV. SRI.P.V.KURIACHAN

RESPONDENT/RESPONDENT/PLAINTIFF :

CHERIYA AYYAPPAN,
S/O. THAMARAKKUTTY AYYAPPAN,
AGED 48 YEARS, PARIYAPURAM AMSOM
ERNAKARANALLUR DESOM, THIRUR TALUK
MALAPPURAM DISTRICT, PIN - 676 302.

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION
ON 29-10-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

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P.B.SURESH KUMAR, J.

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R.S.A.No.1151 of 2015.

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Dated this the 29th day of October, 2015.

J U D G M E N T

The defendants in a suit for recovery of possession based on title are the appellants in this Second Appeal.

2. According to the plaintiff, the plaint A schedule property was purchased by him as per Ext.A1 assignment deed and the defendants who are none other than his sisters and brother have trespassed into a portion of the plaint A schedule property and erected a hut. The portion of the plaint A schedule property in which the defendants have erected the hut is described in the B schedule to the plaint. The defendants contested the suit contending that the plaint A schedule property was owned by the father of the plaintiff and defendants and that on his

death the property devolved on them as well. According to the defendants, as they are the owners of the property, they are not liable to be evicted from the plaint B schedule property. The trial court found that the plaintiff is the absolute owner of the plaint A schedule property as also the plaint B schedule property and consequently decreed the suit. Though the matter was taken in appeal before the appellate court, on a reappraisal of the materials on record, the appellate court confirmed the decision of the trial court. The defendants who are aggrieved by the concurrent decisions against them have thus come up in this Second Appeal.

3. Heard the learned counsel for the appellants.

4. The case set up by the defendants in the written statement is that the plaint A schedule property was acquired by the father of the parties making use of the compensation of a sum of Rs.15,000/- received by him in connection with the death of one of his sons and that the

plaintiff got the document executed in his name without the knowledge of others, taking advantage of the fact that the names of both the plaintiff and his father are one and the same. The trial court as also the appellate court found that the defendants could not establish their case that the plaintiff schedule property was purchased by the plaintiff making use of the money of their father, as contended by them. The attempt of the defendants in this Second Appeal is to challenge the correctness of the said decisions rendered by the courts below. The question as to whether the money utilised by the plaintiff for purchase of plaintiff A schedule property was the money of their father is a pure question of fact. As such, the findings rendered by the courts below on the said question of fact cannot be impugned in this Second Appeal filed under Section 100 of the Code of Civil Procedure. There is no question of law much less any substantial question of law involved in this matter. The Second Appeal is devoid of merits and the same is,

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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.