

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

THURSDAY, THE 12TH DAY OF NOVEMBER 2015/21ST KARTHIKA, 1937

RSA.No. 1177 of 2015 ()

**AS 11/2011 of I ADDL.DISTRICT COURT, PALAKKAD
OS 333/2009 of PRL. MUNSIFF COURT, PALAKKAD**

APPELLANT/APPELLANT/PLAINTIFF :

**SASIDHARAN K., AGED 62 YEARS,
S/O. K. KRISHNAN, KALLAMPOTTA HOUSE,
VALLIKKODE POST AND AMSOM, PALAKKAD DISTRICT**

**BY ADVS.SRI.SAJAN VARGHEESE K.
SRI.LIJU. M.P**

RESPONDENT/RESPONDENT/DEFENDANT :

**SOBHANADASAN K.K., AGED 59 YEARS,
S/O K. KRISHNAN, 3/333. NEAR RAILWAY GATE,
SANKUVARATHODE, VADAKKANTHARA AMSOM, PALAKKAD TALUK,
NOW RESIDING AT "SAIKRISHNA", SATHYASAI NAGAR
AKATHETHARA AMSOM, KALLEKULANGARA PO, PALAKKAD 678 009**

**THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION
ON 12-11-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

bp

P.B.SURESH KUMAR, J.

R.S.A.No.1177 of 2015

Dated this the 12th day of November, 2015

JUDGMENT

The plaintiff in a suit for injunction simplicitor is the appellant in the second appeal.

2. The defendant is the brother of the plaintiff. The case of the plaintiff is that the plaint schedule property which is lying adjacent to the residential property of the plaintiff is in his possession and that the defendant is attempting to trespass into the plaint schedule property. The defendant resisted the suit, contending that he owns the plaint schedule property and that the plaintiff is not in possession of the same. The trial court accepted the case of the defendant and dismissed the suit. The appellate court on

a re-appraisal of the evidence on record confirmed the decision of the trial court. The plaintiff, who is aggrieved by the concurrent decisions against him, has thus come up in the second appeal.

3. Heard the learned counsel for the appellant.

4. The learned counsel for the appellant contended that the facts and circumstances of the case indicate beyond doubt that the plaintiff is in possession of the property. He relied on the report of the Advocate Commissioner appointed in the suit and contended that the plaint schedule property and the residential property of the plaintiff are lying contiguously without there being any demarcating boundaries. According to the learned counsel, the mother of the plaintiff was in possession of the residential property and the plaint schedule property was purchased by her in the name of the defendant.

As noticed above, the suit is one for injunction. The only point to be considered by the court in a suit of this

nature is as to the possession of the property. On the available materials, having regard to the contentions of the parties, the courts below found that the plaintiff is not in possession of the plaint schedule property. The question as to the possession of an item of immovable property is a pure question of fact, the decision on which cannot be challenged in a 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 the second appeal. 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.

P.B.SURESH KUMAR, JUDGE.

smm