

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

MONDAY, THE 2ND DAY OF FEBRUARY 2015/13TH MAGHA, 1936

RSA.No. 699 of 2014 ()

**AGAINST THE JUDGMENT AND DECREE IN AS 78/2012 of SUB COURT, KASARAGOD
DATED 18-03-2014.**

**AGAINST THE JUDGMENT AND DECREE IN OS 55/2012 of ADDL.MUNSIFF, KASARAGOD
DATED 17-10-2012.**

APPELLANTS/APPELLANT(S)/PLAINTIFFS:

- 1. SHEKHARA .A, AGED 58 YEARS,
S/O. THIMMI, RESIDING AT ADRUGULI OF PADI VILLAGE,
KASARAGOD TALUK, P.O. EDNEER.**
- 2. SURESH, AGED 45 YEARS,
S/O. THIMMI, RESIDING AT ADRUGULI OF PADI VILLAGE,
KASARAGOD TALUK, P.O. EDNEER.**
- 3. LALITHA, AGED 52 YEARS,
D/O. THIMMI AND W/O. RAMAKRISHNAN,
RESIDING AT SAFEENA QUARTERS, VADAYAR MUKKU,
KANHANGAD VILLAGE, HOSDURG TALUK, P.O. KANHANGAD.**
- 4. SUJATHA.A. AGED 23 YEARS,
D/O. LATE LEELA AND DECEASED THIMMI, HINDU, WARGADAR,
RESIDING AT SAFEENA QUARTERS, VADAYAR MUKKU,
KANHANGAD VILLAGE, HOSDURG TALUK, P.O. KANHANGAD.**

**BY ADVS.SRI.M.RAMESH CHANDER (SR.).
SRI.ANEESH JOSEPH.
SMT.DENNIS VARGHESE.**

RESPONDENTS/RESPONDENT(S)/DEFENDANTS:

- 1. THE STATE OF KERALA,
REPRESENTED BY THE DISTRICT COLLECTOR, KASARAGOD,
COLLECTORATE, VIDHYANAGAR.P.O., -671 123,
KASARAGOD.**
- 2. THE DEPUTY DIRECTOR OF EDUCATION,
KASARAGOD, COLLECTORATE, VIDYANAGAR.P.O.,
-671 123, KASARAGOD.**

3. THE ASSISTANT EDUCATIONAL OFFICER,
KASARAGOD, NEAR TALUK OFFICE, KASARAGOD,
P.O. KASARAGOD-671 121, KASARAGOD TALUK.
4. THE GOVERNMENT LOWER PRIMARY SCHOOL,
REPRESENTED BY ITS HEAD MASTER, ADRUGLI PADY VILLAGE,
P.O. EDNEER-671 541, KASARAGOD.
5. PARAMESHWARA NAIKA, S/O KUNDA NAIKA,
RESIDING AT ADRUGLI PADY VILLAGE, P.O. EDNEER-671 541
KASARAGOD.
6. THE PRENTS AND TEACHERS ASSOCIATION,
GOVERNMENT PRIMARY SCHOOL, ADRUGULI,
REPRESENTED BY ITS PRESIDENT N.A. ABDUL KHADER,
GOVERNMENT PRIMARY SCHOOL, ADRUGLI PADY VILLAGE,
P.O.EDNEER-671 541, KASARAGOD.

R1 TO R4 BY GOVERNMENT PLEADER SRI.P.K.ABDUL RAHMAN.

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON
02-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

amk

A.HARIPRASAD, J.

R.S.A No.699 of 2014

Dated this the 2nd day of February, 2015.

J U D G M E N T

The second appeal is filed against the concurrent findings of the courts below that the suit filed by the appellants are not legally sustainable. The suit was one for declaration that the appellants have perfected title to B schedule property by adverse possession and limitation and also for consequential prohibitory and mandatory injunctions.

2. Heard the learned counsel for the appellants.

3. Plaint A schedule property was assigned to the appellant's mother as per order in L.A No.113/1985. Patta was also issued in her favour. Along with A schedule property, the appellants would contend that the assignee came into possession of B schedule property as well, having an extent of 25 ¼ cents in Resurvey No.190/1 of Pady village. According to the appellants, both the properties are lying together as a compact plot and

without any demarcations. It is the case of the appellants that they filed an earlier suit as O.S No.208/2010 before the Munsiff's Court, Kasaragod seeking injunction against the respondents and an Advocate Commissioner was deputed for local inspection. After visit, he prepared a plan and report. Later, that suit was dismissed as not pressed. Appellants would contend that the respondents have trespassed into a portion of B schedule property and they have taken steps to assign the property in the name of a lower primary school.

4. The respondents resisted the suit by contending that the appellants have no manner of title over B schedule property. According to the respondents, B schedule property is part and parcel of Government land over which the appellants have no possession at any point of time. Not only that, the appellants cannot claim title by adverse possession and limitation since there is no evidence to show that they are in possession of the property for thirty years for claiming the right.

5. Learned counsel for the appellants submitted that Exts.A14 to A16, the plans and reports submitted by the Advocate Commissioner in O.S No.208/2010 would show that A and B schedule properties are lying as a single plot surrounded by a common boundary. That apart, basement of an old house is also seen partly in A schedule and remaining part in B schedule. According to the learned counsel for the appellants, the lie of the property as revealed from the Commissioner's plan and report would only suggest that the appellants were enjoying the property as a single tenement for more than thirty years.

6. I have gone through the impugned judgment of the lower appellate court and also that of the trial court. The courts below concurrently found that there is no evidence to show that the appellants' predecessor got possession of B schedule property along with A schedule property after assignment. Learned counsel for the appellants strongly relied on Ext.A17 statement given by mother of the appellants to contend that the

appellants were in possession of the property for more than thirty years. It is only a self-serving statement and it is not properly proved before the trial court. That apart, the courts below on analysis of evidence found that the appellants failed to plead and prove the actual date of commencement of adverse possession against the Government in respect of B schedule property. The assignment in favour of the appellants' mother was only in the year 1985. The suit was instituted in the year 2012. Admittedly, thirty years have not been elapsed by the time. In the absence of any specific pleading regarding the date of commencement of adverse possession, the question of prescribing title by adverse possession or limitation cannot be considered. Besides, the evidence adduced also would not show any pleading to hold that the appellants perfected their title by adverse possession and limitation. There is no substantial question of law raised in this case.

7. Learned counsel for the appellants contended on the

basis of the decision in *Rame Gowda (dead) by Lrs. v. M.Varadappa Naidu (dead) by Lrs. and another ((2004) 1 SCC 769)* that a person in a settled possession can seek injunction against true owner. The term 'settled possession' has been explained by the Apex Court in that decision. The cardinal distinction between the facts of this case and the facts in *Rame Gowda's* case (supra) is that the present suit is one for declaration of title and consequential relief, whereas the other suit was based purely on the possession and dispossession under Section 6 of the Specific Relief Act, 1963. Therefore, the said decision has no application to this case. I find no merit in this appeal. Hence, the regular second appeal is dismissed.

All pending interlocutory applications will stand dismissed.

Sd/-
A.HARIPRASAD,
JUDGE.
//True copy//

P.A to Judge