

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

MONDAY, THE 9TH DAY OF NOVEMBER 2015/18TH KARTHIKA, 1937

RSA.No. 703 of 2014

O.S.NO.1561/2004 OF PRINCIPAL MUNSIF COURT, THRISSUR

A.S.NO.415/2007 OF ADDITIONAL DISTRICT COURT -IV, THRISSUR

**APPELLANT(S)/RESPONDENTS 1 TO 3 AND ADDITIONAL 7TH & 8TH
RESPONDENTS/PLAINTIFFS 1 TO 3 :**

1. SIVARAMAN (DIED), AGED 45 YEARS,
S/O.THEKKEPURATH AYYAPPAN, ANJOOR VILLAGE, MUNDUR,
ANDAPARAMBU DESOM, THRISSUR TALUK.
2. VILASINI, AGED 46 YEARS,
W/O.THEKKEPPURATH SIVARAMAN, DO. DO. DO.
3. KARTHYAYANI, AGED 65 YEARS,
D/O.THEKKEPURATH AYYAPPAN, DO. DO. DO.
4. NAVANEETH, AGED 22 YEARS,
S/O.LATE SIVARAMAN, THEKKEPPURATH HOUSE, ANJUR VILLAGE,
MUNDUR, ANDAPARAMBU DESOM, THRISSUR TALUK.
5. NIVIYA, AGED 20 YEARS,
D/O.LATE SIVARAMAN, THEKKEPPURATH HOUSE, DO. DO.DO.

BY ADV. SRI.T.A.RAJAGOPALAN

**RESPONDENT(S)/1ST TO 4TH APPELLANTS AND 4TH TO 6TH
RESPONDENTS/DEFENDANTS.:**

1. DHAMAYANTHI, AGED 72 YEARS,
W/O.LATE NELLIKKAL KUMARAN, ANJOOR VILLAGE, MUNDUR,
ANDPARAMBU DESOM, THRISSUR TALUK, PIN- 680 541.
2. ARAVINDAN, AGED 46 YEARS,
S/O.LATE NELLIKKAL KUMARAN, DO. DO. DO.
3. SUDHA, AGED 43 YEARS,
D/O.LATE NELLIKKAL KUMARAN, DO. DO. DO.

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- 4. GEETHA, AGED 40 YEARS,
D/O.LATE NELLIKKAL KUMARAN, DO. DO.DO.**
- 5. KERALA GOVERNMENT,
REPRESENTED BY DISTRICT COLLECTOR, THRISSUR
COLLECTOR, THRISSUR, PIN- 680 003.**
- 6. THE TAHSILDAR,
THRISSUR, PIN- 680 003.**
- 7. THE VILLAGE OFFICER,
ANJOOR VILLAGE OFFICE, MUNDUR, THRISSUR,
PIN 680 541.**

R5 TO R7 BY GOVERNMENT PLEADER SRI.JOBY JOSEPH

**THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION
ON 09-11-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

Msd.

P.B.SURESH KUMAR, J.

R.S.A.No.703 of 2014

Dated this the 9th day of November, 2015

JUDGMENT

Plaintiffs 2 and 3 and the legal representatives of the deceased first plaintiff in a suit for injunction are the appellants in the second appeal.

2. The plaint A schedule property belongs to the plaintiffs and the plaint B schedule property is a puramboke land lying adjacent to the plaint A schedule property. According to the plaintiffs, the plaint B schedule property is situated on the north of item No.1 of plaint A schedule property and on the south of item Nos.2 and 3 of plaint A schedule property. The case of the plaintiffs is that they are in exclusive possession of the plaint B schedule property for

the last more than 30 years. The defendants contested the suit. The contention of the defendants was that the plaintiffs are not in possession of the plaint B schedule property. The trial court found that the plaintiffs are in exclusive possession of the plaint B schedule property and consequently decreed the suit restraining the defendants from trespassing into the plaint B schedule property and committing waste therein. Defendants 5 to 8 took up the matter in appeal. The appellate court noticed that the plaintiffs are asserting possession over the plaint B schedule property on the basis that the Advocate Commissioner appointed in the suit found the kennel shed, washing stone and grinding stone of the plaintiffs in the plaint B schedule puramboke land. According to the appellate court, merely for the reason that the kennel shed, washing stone and grinding stone of the plaintiffs are found by the Advocate

Commissioner in the plaint B schedule property, it cannot be inferred that the plaintiffs are in possession of the said property. Consequently, the appellate court reversed the decision of the trial court and dismissed the suit. Aggrieved by the said decision of the appellate court, the plaintiffs have come up in this second appeal.

3. Heard the learned counsel for the appellants.

4. The question as to whether a person is in possession of an immovable property is a pure question of fact. The appellate court, on facts, found that the plaintiffs have not established possession over the plaint B schedule property. In the said view of the matter, I do not find any reason to interfere with the decision of appellate court, in exercise of my power 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

and the same is, accordingly dismissed. All the interlocutory applications in the appeal are closed.

P.B.SURESH KUMAR, JUDGE.

smm