

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

MONDAY, THE 8TH DAY OF JUNE 2015/18TH JYAISHTA, 1937

SA.No. 40 of 2003 (D)

(AGAINST THE JUDGMENT IN AS 133/1994 of 1st ADDITIONAL DISTRICT
COURT, PALAKKAD DATED 07-10-2002

OS 196/1991 of MUNSIF COURT, CHITTUR)

APPELLANTS/RESPONDENTS/DEFENDANT NOS.1 & 2:

1. BALAN, S/O. NARAYANAN,
VITHINASSERY, VALLANGHI VILLAGE, CHITTUR TALUK
PALAKKAD DISTRICT. (DIED. LRs IMPEADED)
2. KESAVAN, S/O. NARAYANAN,
-DO- -DO-.
- ADDL.3. KAMALAM, W/O. LATE BALAN,
VEERANGATH HOUSE, VITHANASSERI,
NENMARA P.O., CHITTUR TALUK,
PALAKKAD DISTRICT.
- ADDL.4. MOHANAN.B, S/O. LATE BALAN,
-DO- -DO-
- ADDL.5. MANIKANDAN.B, S/O. LATE BALAN,
-DO- -DO-
- ADDL.6. SATHYABHAMA, D/O. LATE BALAN AND W/O. MADHAVAN,
PARACKAL HOUSE, KADUKKAMKUNNAM,
MALAMPUZHA, PALAKKAD.

(ADDL.APPELLANTS 3 TO 6 ARE IMPEADED AS LRs OF
DECEASED 1ST APPELLANT AS PER ORDER DTD.13.8.2007 IN
I.A.1437/07).

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

RESPONDENTS/APPELLANT & RESPONDENT NO.3/PLAINTIFF &
DEFENDANT No.3:

1. THANKAPPAN, S/O. CHAMIYAR,
P.W.D. CONTRACTOR, VITHINASSERY, VALLANGHI VILLAGE,
CHITTUR TALUK, NEMMARA VIA., PALAKKAD DISTRICT.

SA.No. 40/2003

2. MANICKAN, S/O. NARAYANAN, (DELETED)
VITHINASSERY, VALLANGHI VILLAGE, CHITTUR TALUK
NEMMARA (VIA), PALAKKAD DIST.

(R2 DELETED FROM THE PARTY ARRAY AT THE RISK OF THE
APPELLANT AS PER ORDER DTD.13/08/07 IN I.A.1438/07).

R1 BY ADV. SRI.O.RAMACHANDRAN NAMBIAR
R1 BY ADV. SMT.C.R.SARADAMANI

THIS SECOND APPEAL HAVING BEEN FINALLY HEARD ON
08-06-2015, ALONG WITH SA.41/2003, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

P.BHAVADASAN, J.

Second Appeal Nos.40 & 41 OF 2003

Dated this the 8th day of June, 2015.

J U D G M E N T

Two suits; one for perpetual prohibitory injunction and the other for fixation of boundary were jointly tried and disposed of by a common order. The trial court accepted Ext.C2 plan and decreed O.S.No.234/1991 and fixed the boundary accordingly. O.S.No.196/1991 was partially decreed allowing the plaintiff in the suit to construct a compound wall.

2. Both parties went up in appeal as A.S.Nos.133 and 134 of 1994. The lower appellate court interfered with the trial court decree and passed a decree as follows:

“In the result, the common decree and judgment of the lower court in O.S.No.234/1991 is modified to the effect that the survey demarcation line in between the properties of the plaintiffs and defendant is fixed as red line in between the yellow shaded portion and red shaded portion located in Ext.C2 plan and Ext.C2 plan will form part of the decree. The common decree and judgment in

O.S.No.196/1991 is also modified to the effect that the plaintiff is permitted to construct a compound wall through the red line located in Ext.C2 plan and the defendants are restrained from making any obstruction to the construction of fence or compound wall or other boundary fencing through the red line located in Ext.C2 plan and Ext.C2 plan will form part of the decree, by allowing these two appeals in part accordingly. Considering the nature of dispute, the parties are directed to suffer their respective costs”.

3. It is significant to notice that both the courts below have relied on Ext.C2 plan. It is not in dispute that the property belonging to the appellants is comprised in survey No.246/2 and the property that is available to the respondents is comprised in survey Nos.246/3 and 246/9. The document of title of respondents is Ext.B1. Ext.A1 is a common document of title. It is true that in Ext.A1 neither the survey number nor the extent of properties are mentioned. But the properties are properly described. It is important to notice that in B schedule to Ext.A1 item No.5, following narration is available.

“വാക്കൊട്ടിൽ 2 വീടും വളപ്പുകളും ഉള്ളതിൽ കിഴക്കെ വീടും മച്ചിട്ട ഓട ഗുമേഞ്ഞ പ ഗുരയും തൊഴ ഗുത്തും ചായ് പ ഗും

സകല ചമയങ്ങളും കൂടി ഇതിൽ പടിഞ്ഞാറെ വെലിക്കൽ
തെക്കേതും വടക്കേതും രണ്ടു തെങ്ങും എ പട്ടികക്കു
വെച്ചതാണ്”.

That would indicate that there is a fence on the western side of that item of property.

4. Coming back to Ext.C2 plan, on a bare look of Ext.B1 would show that Ext.C2 plan cannot be correct. Ext.B1 to which no objection is taken by any of the parties describes the properties dealt with under the document as follows:

“വിത്തനശ്ശേരിയിൽ സർവെ 246/3 നമ്പറിൽ
29 സെ വളപ്പ് തന്നിലെ ഓട് മേഞ്ഞ എലക്ട്രിഫൈഡ്
വീടും സകല കൂഴികളും വൃക്ഷ ചമയങ്ങളും ഇതിനും
കിഴക്കുഭാഗം സർവെ 246/9 നമ്പറിൽ 4 സെ
വഴിസ്ഥലവും തന്നിലെ തെങ്ങുകളും”

5. It is clear from a reading of Ext.B1 document that 4 cents comprised in survey No.246/9 is a way in which there are coconut trees. Now going by Ext.C2 plan, the way scheduled in Ext.B1 is on the western side of the property comprised in survey No.246/9. That cannot obviously be correct even going by the description in Ext.B1 there is no way in between the property

comprised in survey Nos.246/3 and 246/9. Therefore, the decree passed by both the courts below based on Ext.C2 cannot be sustained.

In the result, these appeals are allowed. The impugned judgment and decree are set aside and the matter is remanded to the trial court with a direction to issue a fresh commission to identify the properties in terms of Ext.A1 and Ext.B1 and dispose of the matter as expeditiously as possible, at any rate, within a period of six months from the date of appearance. The parties shall appear before the lower court on 14.07.2015. The existing commission reports are set aside and a fresh commission will be taken out to identify and measure the respective properties.

Sd/-

**P.BHAVADASAN
JUDGE**

smp

// True Copy //

P.A. to Judge