

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 4TH DAY OF MARCH 2015/13TH PHALGUNA, 1936

SA.No. 259 of 2003

A.S.NO.324/1998 OF DISTRICT COURT, THRISSUR

O.S.NO.61/1981 OF II ADDITIONAL SUB COURT, THRISSUR

**APPELLANT(S) : (LEGAL REPRESENTATIVES OF THE 2ND DEFENDANT-
APPELLANTS 2 TO 5 IN THE APPEAL)**

1. RAMUNNI MENON,
SON OF KOCHUKUTTY AMMA, "SREEDEVI",
DR.PAI ROAD, POOJAPURA JUNCTION,
THIRUVANANTHAPURAM.
2. GEETHA,
D/O.LATE MALATHI AMMA, "SREEDEVI",
DR.PAI ROAD, POOJAPURA JUNCTION,
THIRUVANANTHAPURAM.
3. SIDHARTHAN,
SON OF LATE MATHAI AMMA, "SREEDEVI",
DR.PAI ROAD, POOJAPURA JUNCTION,
THIRUVANANTHAPURAM.
4. SHANTHI,
D/O.LATE MALATHI AMMA, "SREEDEVI",
DR.PAI ROAD, POOJAPURA JUNCTION,
THIRUVANANTHAPURAM.

(APPELLANT NO.2 REPRESENTED BY POWER OF ATTORNEY HOLDER,
APPELLANT NO.1)

BY SRI.T.KRISHNAN UNNI (SENIOR ADVOCATE)
ADVS. SRI.M.R.VENUGOPAL
SMT.DHANYA PASHOKAN

SA.No. 259 of 2003

**RESPONDENT(S): (PLAINTIFFS 2,3, DEFENDANTS 3,5 TO 11 AND L.RS OF
THE 1ST PLAINTIFF-RESPONDENTS 2 TO 16 IN THE APPEAL)**

1. THANKAM ALIAS RUGMINI AMMA,
D/O.KIZHAKKEDATH AMMINI ALIAS LAKSHMI AMMA,
ENKAKKAD VILLAGE, P.O.ENKAKKAD, THALAPPILLY TALUK,
THRISSUR DISTRICT.
 2. UNNI ALIAS SAVITHRI AMMA,
D/O.KIZHAKKEDATH AMMINI ALIAS LAKSHMI AMMA,
ENKAKKAD VILLAGE, P.O.ENKAKKAD, THALAPPILLY TALUK,
THRISSUR DISTRICT.
 3. UNNIKRISHNA MENON,
SON OF MARATH KUNJIKAVU AMMA, NO.20,
GANDHI NAGAR, ERNAKULAM, COCHIN-20.
 - * 4. PADMANABHAN NAIR,
S/O.KIZHAKKEDATH AMMINI ALIAS LAKSHMI AMMA,
ENKAKKAD VILLAGE, P.O.ENKAKKAD, THALAPPILLY TALUK,
THRISSUR DISTRICT.(DIED)
- * IT IS RECORDED THAT THERE IS NO NEED TO TAKE STEPS FOR
IMPLEADING THE LRS OF DECEASED R4 AS PER ORDER
DATED 05.03.2004 ON MEMO DATED 29.02.2004 ON MEMO BEARING
C.F.NO.1180/2004.
5. SATHY PADMANABHAN,
W/O.PADMANABHA MENON, MARATH HOUSE,
ENKAKKAD VILLAGE, P.O.ENKAKKAD, THALAPPILLY TALUK,
THRISSUR DISTRICT.
 6. PADMAKUMAR,
S/O.PADMANABHA MENON, MARATH HOUSE,
ENKAKKAD VILLAGE, P.O.ENKAKKAD, THALAPPILLY TALUK,
THRISSUR DISTRICT.
 7. RAMKUMAR,
S/O.PADMANABHA MENON, MARATH HOUSE,
ENKAKKAD VILLAGE, P.O.ENKAKKAD, THALAPPILLY TALUK,
THRISSUR DISTRICT.
 8. ANIL KUMAR,
S/O.PADMANABHA MENON, MARATH HOUSE,
ENKAKKAD VILLAGE, P.O.ENKAKKAD, THALAPPILLY TALUK,
THRISSUR DISTRICT.

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9. KRISHNAKUMAR,
S/O.PADMANABHA MENON, MARATH HOUSE,
ENKAKKAD VILLAGE, P.O.ENKAKKAD, THALAPPILLY TALUK,
THRISSUR DISTRICT.
10. VENUGOPALAN,
SON OF SANKUNNI NAIR, SARADA MANDIRAM,
MULAKUNNATHUKAVU DESOM, KILLANNUR VILLAGE,
P.O.MULAKUNNATHUKAVU, THRISSUR DISTRICT.(DIED)
11. THANKAM,
W/O.LATE ARAVINDAKSHAN NAIR, KIZHAKKEDATH HOUSE,
ENKAKKAD VILLAGE AND DESOM, P.O.ENKAKKAD,
THALAPPILLY TALUK, THRISSUR DISTRICT.
12. BABURAJ,
S/O.LATE ARAVINDAKSHAN NAIR, KIZHAKKEDATH HOUSE,
ENKAKKAD VILLAGE AND DESOM, P.O.ENKAKKAD,
THALAPPILLY TALUK, THRISSUR DISTRICT.
13. AMBIKA,
D/O.LATE ARAVINDAKSHAN NAIR, KIZHAKKEDATH HOUSE,
ENKAKKAD VILLAGE AND DESOM, P.O.ENKAKKAD,
THALAPPILLY TALUK, THRISSUR DISTRICT.
14. PRAKSH BABU,
S/O.LATE ARAVINDAKSHAN NAIR, KIZHAKKEDATH HOUSE,
ENKAKKAD VILLAGE AND DESOM, P.O.ENKAKKAD,
THALAPPILLY TALUK, THRISSUR DISTRICT.
15. AMBILI,
D/O.LATE ARAVINDAKSHAN NAIR, KIZHAKKEDATH HOUSE,
ENKAKKAD VILLAGE AND DESOM, P.O.ENKAKKAD,
THALAPPILLY TALUK, THRISSUR DISTRICT.

@ ADDITIONAL R16 TO R20 IMPEADED

16. SMT.SARADAMANI,
W/O.VENUGOPALAN, SARADAMANDIRAM,
P.O.MULAMKUNNATHUKAVU, THRISSUR.
17. MURALEEDHARAN V.S,
S/O.VENUGOPALAN, SARADAMANDIRAM
P.O.MULAMKUNNATHUKAVU, THRISSUR.
18. KRISHNAKUMAR.V.S,
S/O.VENUGOPALAN, P.O.MULAMKUNNATHUKAVU,
THRISSUR.

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19. HARIDAS V.S,
S/O.VENUGOPALAN, P.O.MULAMKUNNATHUKAVU,
THRISSUR.
20. JYOTHI.V.S,
S/O.VENUGOPALAN,P.O.MULAMKUNNATHUKAVU,
THRISSUR.

@ ADDITIONAL R16 TO R20 ARE IMPEADED AS THE LR'S OF THE DECEASED
10TH RESPONDENT AS PER ORDER DATED 18.02.2010 IN I.A.NO.400/2010.

R1 & R2 BY ADVS. SRI.C.VALSALAN
SMT.THUSHARA.V
R11 TO R15 BY ADVS. SRI.N.SUBRAMANIAM
SRI.M.S.NARAYANAN
R16 TO R20 BY ADV. SRI.S.A.SAJU (BY ORDER)

THIS SECOND APPEAL HAVING BEEN FINALLY HEARD
ON 01-12-2014, THE COURT ON 04-03-2015 DELIVERED
THE FOLLOWING:

Msd.

A.V. RAMAKRISHNA PILLAI, J.

S.A. No. 259 of 2003

Dated this the 4th day of March, 2015

J U D G M E N T

The legal representatives of the deceased 2nd defendant in the original suit are in appeal. The respondents are the legal representatives of the deceased 1st plaintiff, plaintiffs 2 & 3 and defendants 3 & 5-11 in the original suit.

2. The suit was filed by deceased Aravindakshan Nair (the 1st plaintiff) along with respondents 1 and 2 herein for recovery of the possession of the property. In the plaint, it was alleged that the plaint schedule property belonged to the 1st defendant and her brother, Sankunni Nair, as per a sale deed No.2218/1117 M.E. After the death of Sankunni Nair, the legal heirs of Sankunni Nair assigned half right over the said property, which they inherited from Sankunni Nair, to Kunhikavamma, who is the mother of defendants 1 to 4. The 1st defendant and

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Kunhikkavamma became the co-owners of the plaint schedule property. One Kunkumath Parangodan Nair, who was the predecessor in interest of the plaintiffs, took the plaint schedule property on lease on 24.10.1121. Though the lease was for a period of one year, he continued the tenancy on the same terms and conditions. After the death of Parangodan Nair, the suit property was partitioned in 1951. Thus, the plaint schedule property was allotted to one Lakshmi Amma and her children, who are the plaintiffs and the 5th defendant. Lakshmi Amma died in the year 1958. In the meanwhile, the rent for the years, 1130 and 1131, fell in arrears. Therefore, OS No.338/1956 was filed before the Munsiff's Court, Wadakkancherry for realization of rent arrears as charged on the leasehold right over the property. In the suit, application for appointment of a receiver was filed for preservation of the profits of the property. Accordingly, Kunjikkavamma was appointed as the receiver. She took possession of the property. The suit

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was decreed in 1956 allowing recovery of rent arrears. However, the receiver continued in possession. An execution petition was filed as EP No.130/1957, which was dismissed as provided in Act 1/57. Later, another execution petition was filed as EP No.778/1966. That also was dismissed on account of the stay in Act 9/1967. After the advent of Act 36/69, the liability to pay future rent had ceased to exist. The family of the plaintiffs and the 5th defendant only survived. Kunjikkavamma died on 01.09.1970. After her death, applications were filed for recovery of the property from the possession of the receiver. However, those applications were dismissed finding that as the receiver had ceased to exist, the remedy is only to file a fresh suit. Accordingly, the plaintiffs filed the suit for recovery of possession.

3. In the joint written statement filed by defendants 1, 2 and 4, they admitted the lease in the name of Parangodan Nair. Though they admitted the execution of partition deed in 1951, by which the

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property was allotted to Lakshmi Amma, who is the mother of the plaintiffs and the 5th defendant, they contended that it was not given to them as stated in the partition deed. They contended that though the partition deed was executed, Govindan Nair, who is the son of Parangodan Nair, continued possession of the property even after partition. According to them, on appointment of Kunjikkavamma as receiver, she took possession of the property from Govindan Nair. In OS No.338/56, the plaintiffs and the 5th defendant were arrayed as defendants 7 to 10. However, defendants 1, 2, 5 and 6 alone contested the suit. As the paddy field was not yielding, Lakshmi Amma and her children never attempted to take possession of the property. Subsequent to the dismissal of the execution petition in 1967, the plaintiffs and the 5th defendant approached Kunjikkavamma and agreed that they have no objection in taking the property by Kunjikkavamma and her 'taravadu', in case they were exonerated from the decree

liability and the liability to pay future rent. Pursuant to that, no step was taken. Therefore, they contended that the right of the plaintiffs has been lost by adverse possession since 1966; and the same had been lost by waiver and abandonment also. If, at all, the plaintiffs and the 5th defendant had any right, the same had been lost by adverse possession and limitation.

4. In a separate written statement filed by the 11th defendant, it was contended that the suit is barred by res judicata and estoppel on account of the orders in OS No.338/56. The lease in the name of Parangodan Nair was admitted. According to the 11th defendant, only the 5th defendant appeared in EP No.778/66 and he did not take any step against the receiver. It was also contended that Kunjikkavamma and Janaki Amma cultivated the properties; and after the death of Kunjikkavamma, her legal heirs are in absolute possession and enjoyment of the property.

5. The trial court, after raising proper issues for

trial, permitted the parties to adduce evidence. At the trial, on the side of plaintiffs, PW1 is examined and Exts.A1 to A13 were marked. On the side of the defendants, DW1 is examined. The trial court, after considering the evidence, decreed the suit.

6. The matter was taken in appeal before the lower appellate court in two separate appeals. One appeal was filed by the 2nd defendant and the other appeal was preferred by the 11th defendant. As common issue was involved, the lower appellate court considered both appeals together and disposed of the same by a common judgment, by which the decree of the trial court was upheld dismissing the appeals. It is with this background, the appellants have approached this Court with this second appeal.

7. I have heard the learned senior counsel for the appellants and the learned counsel for the respondents.

8. The learned senior counsel for the appellants gave thrust to the argument that the remedy open to the

plaintiffs was to make an application in OS No.338/1956 to get possession of the suit property within a period of three years from the date of death of Kunjikkavamma, i.e., 04.09.1970. It was pointed out that Ext.A9 application was filed in 1978; and therefore, that application was barred by limitation. It was further argued that though it is observed in Ext.A13 order that the plaintiffs could file a fresh suit, that observation is not binding on the defendants since Ext.A9 application was dismissed as per Ext.A13 order; and therefore, they could challenge that order in appeal or revision only.

9. The learned counsel for the respondents, per contra, would submit that the right of the plaintiffs to approach the civil court was specifically preserved by a competent forum; and therefore, they have approached the trial court with the present suit. Thus, the learned counsel justified the impugned judgment and decree.

10. The devolution of title as well as the lease in the name of Parangodan Nair, the subsequent suit for

recovery of rent, appointment of Kunjikkavamma as receiver etc. are admitted by the defendants. Here, the plaintiffs have sought recovery of title on the basis of their possession as tenants. If the tenancy right is subsisting, the plaintiffs have every right to recover possession on the strength of tenancy. The property, which was taken on lease by Parangodan Nair, was subjected to partition in 1951, by which the suit property was allotted to Lakshmi Amma and her children, who are the plaintiffs and the 5th defendant. Lakshmi Amma died in 1958; and while so, the rent fell in arrears. Ext.A2 suit was filed for arrears and Ext.A3 decree was obtained. Ext.A2 suit was filed by Kunjikkavamma and Janaki Amma. Janaki Amma is the 1st defendant in the suit. In para 7 of Ext.A2 suit, it is stated that the property was possessed and enjoyed by defendants 1 to 10 therein after the death of Parangodan Nair. Defendants 7 to 10 therein are Lakshmi Amma and her children. Plaintiffs and the 5th defendant are defendants 8 to 10 therein.

Though it was contended by the defendants that Govindan Nair was in possession while the property was taken over by the receiver, Govindan Nair had no right after the partition and the property was in possession of Lakshmi Amma and her children. The suit was decreed for realization of the amount by sale of leasehold right of the property. Therefore, on the date of passing of the decree, the leasehold right was subsisting. Kunjikkavamma was appointed as receiver for the preservation and protection of the property, over which, charges were imposed. Therefore, as rightly pointed out by the lower court, the appointment of receiver was not in derogation of or adverse to the interest of the leasehold right of the defendants in that suit. The court below has rightly found that in the execution petition filed in 1966, it is admitted that the 11th defendant, who is the father of defendants 8 to 10, was possessing the property as per the partition deed. In other words, the possession of the plaintiffs and the 5th defendant was conceded in the

execution petition. Therefore, it cannot be said that at the time when Kunjikkavamma, the receiver, was put in possession of the property, the property was not in the possession of the plaintiffs and the 5th defendant as tenants. Kunjikkavamma was holding the property during the continuance of tenancy, that too, conceding the tenancy right of the plaintiffs and the 5th defendant; and therefore, her possession cannot be adverse. Moreover, it is settled that the possession of the receiver will not be adverse to any party. Till the death of Kunjikkavamma, the receiver was not discharged. However, on the death of the receiver, the receivership stood automatically discharged. This is the reason why the plaintiffs approached the court in OS No.338/1956 as IA Nos.956/78 & 97/80 to get possession. However, the same was disallowed giving them opportunity to pursue a fresh suit. That is how the plaintiffs happened to approach the civil court.

11. It was strenuously argued by the learned senior

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counsel for the appellants that when the remedy of the plaintiffs was to approach the court, which appointed the receiver, and when that remedy is barred by limitation, they are not entitled to file a suit on title and take shelter under Article 65 of the Limitation Act. According to the learned senior counsel for the appellants, the Article applies to the case is Article 113 of the Limitation Act.

12. In reply to the said argument, the learned counsel for the respondents submitted that by the death of the receiver, the receivership stood terminated; and therefore, the relevant provision applicable is Section 65 of the Limitation Act.

13. In answer to the said submission, the learned senior counsel for the appellants submitted that after the termination of the suit, the parties cannot claim that the receiver was holding possession for them. The legal position with regard to continuance of receivership was laid down by the apex court in **Hiralal Patni** v. **Loonkaran Sethiya & Others** [AIR 1962 SC 21] as

follows;

- (1) If a receiver is appointed in a suit until judgment, the appointment is brought to an end by the judgment in the suit;
- (2) If a receiver is appointed in a suit, without his tenure being expressly defined, he will continue to be receiver till he is discharged;
- (3) Even after the final disposal of the suit as between the parties to the suit, the receiver's functions are terminated, he would still be answerable in the court as its officer till he is finally discharged;
- (4) The court has ample power to continue the receiver even after the final decree if the exigencies of the case so require.

14. Here, in this case, the receivership stood terminated with effect from the date of death of the receiver. Once the receivership stood terminated, the person, who is entitled to be in possession, can recover possession before the claim set up by the other party,

who holds possession, crystallizes due to adverse possession and limitation. Therefore, this Court is of the view that the present suit filed by the plaintiffs is maintainable in law and the courts below were perfectly justified in granting the decree as prayed for.

In the result, the appeal fails; and accordingly, it is dismissed. No costs.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

bka/-

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PA to Judge