

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

WEDNESDAY, THE 17TH DAY OF JUNE 2015/27TH JYAISHTA, 1937

RSA.No. 1173 of 2014 (F)

AGAINST THE JUDGMENT IN AS 96/2009 of SUB COURT, KOCHI

AGAINST THE JUDGMENT IN OS 192/2008 of PRINCIPAL MUNSIFF'S COURT, KOCHI

APPELLANTS/APPELLANTS/ DEFENDANTS:

1. E.D.BALACHANDRA PAI, AGED 60,
S/O DASA PAI, THATTAPARAMBIL HOUSE AROOR P.O, AROOR
2. E.D MANICKA PAI, AGED 58 YEARS
S/O DASA PAI, ELANGICAL HOUSE, CHERIAKADAVU, KANNAMALY, KOCHI-8.
3. DEVA RANI, AGED 65, W/O LATE E.D RAMACHANDRA PAI,
ELANGICAL HOUSE, CHERIAKADAVU, KANNAMALY, KOCHI-8.
4. HARIDAS PAI E.R, AGED 30, S/O LATE E.D. RAMACHANDRA PAI,
ELANGICAL HOUSE, CHERIAKADAVU, KANNAMALY, KOCHI-8.
5. VASANTHAKUMARI E.R, AGED 37,
D/O LATE E.D. RAMACHANDRA PAI, ELANGICAL HOUSE,
CHERIAKADAVU, KANNAMALY, KOCHI-8.
6. SOBHA E.R, AGED 28, D/O LATE E.D. RAMACHANDRA PAI,
ELANGICAL HOUSE, CHERIAKADAVU, KANNAMALY, KOCHI-8.
7. SARITHA E.R, AGED 26, D/O LATE E.D. RAMACHANDRA PAI,
ELANGICAL HOUSE, CHERIAKADAVU, KANNAMALY, KOCHI-8.

BY ADV. SRI.G.KRISHNAKUMAR

RESPONDENTS/RESPONDENTS/ DEFENDANTS:

1. CHITHRA R.SHENOY, AGED 32,
W/O SANTHOSH AND D/O RADHAKRISHNA SHENOY,
RESIDING AT CC 41/265-B, MAHAKAVI BHARATHIAR ROAD, ERNAKULAM.
2. GEETHA R. SHENOY, D/O RADHAKRISHNA SHENOY,
MAHAKAVI BHARATHIAR ROAD, ERNAKULAM

R1, R2 BY ADV. SRI.K.R.VINOD CAVEATOR

**THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON
17-06-2015, ALONG WITH R.S.A.NO.125 OF 2015, THE COURT ON THE SAME
DAY DELIVERED THE FOLLOWING:**

AS

A.HARIPRASAD, J.

R.S.A.No.1173 of 2014

&

R.S.A.No.125 of 2015

Dated this the 17th day of June, 2015

COMMON J U D G M E N T

Common judgment passed by the learned Sub Judge, Kochi is under challenge in these appeals.

2. R.S.A.No.125 of 2015 is filed by the plaintiffs in O.S.No.168 of 2008 on the file of the Court of Munsiff's Kochi. R.S.A.No.1173 of 2014 is filed by the defendants in O.S.No.192 of 2008 before the same court. Parties are referred to in the rank specified in O.S.No.168 of 2008 on the file of the Munsiff's Court, Kochi for the sake of convenience.

3. Short facts relevant for disposal of the cases are as follows: Plaint schedule building was constructed by Dasa Pai. First and second plaintiffs are the sons of Dasa Pai and the third plaintiff is the daughter-in-law and other plaintiffs are his grand children. The building was constructed in the year 1961. It is the contention of the plaintiffs that it was constructed with the permission of

Giree Shenoy, great grand father of the defendants. Plaintiffs are licensees with respect to the land and building. Dasa Pai died in the year 1969. He had 4 sons. Out of them, one son by name Madhava Pai died issueless in the year 2005. Plaintiffs are the legal representatives of Ramachandra Pai, who is one son of Dasa Pai. The plaintiffs claim an irrevocable licence under Section 60(b) of the Easement Act. The defendants attempted to evict the plaintiffs by force. Hence, the suit for injunction.

4. The defendants filed a written statement opposing the entire claims in the plaint. According to them, the plaintiffs are in permissive occupation in the building. The irrevocable licence set up in the plaint is totally untrue. The defendants have filed O.S.No.192 of 2008 before the same court for a mandatory injunction against the plaintiffs directing them to vacate the premises. Both the suits were tried and the trial court decreed the suit filed by the defendants and dismissed the suit filed by the plaintiffs. Thereafter, the plaintiffs took up

the matter in appeal. Learned Sub Judge, after considering the rival contentions dismissed both the appeals filed by the plaintiffs confirming the judgments and decrees of the trial court.

5. Heard the learned counsel for the appellants and the contesting respondents.

6. Learned counsel for the contesting respondents submitted that as the appeal was filed with inordinate delay, the decree in the mandatory injunction suit was put to execution and the plaintiffs were evicted from the building. And later the building had been demolished. It is therefore the contention that the subject matter of the dispute is not in existence at the moment. In answer to that contention, learned counsel for the plaintiffs submitted that even if that be so their rights will have to be adjudicated if it falls under Section 60(b) of the Easement Act.

7. Learned counsel for the plaintiffs took up another contention based on the decision in **Vadakkayil**

Gopalan and others v. Vadakkayil Paru and others

[2013 (2) KHC 902] that a Will executed by Giree Shenoy in favour of the predecessor in interest of the defendants which was not proved properly, cannot be acted upon. According to him, even if a Will is admitted, it shall be proved in accordance with Section 68 of the Evidence Act. The ratio in the above decision is pressed in to service to urge this contention. I am afraid, I cannot accept that contention in the light of the facts and circumstances established in this case. Learned counsel for the defendants contended that the plaintiffs themselves set up a derivative title by way of licence under the legatees. The court below on the basis of the evidence adduced found that the irrevocable licence claimed under Section 60(b) of the Easement Act could not be established. I find no illegality in that finding. That apart, the contention raised by the plaintiffs regarding the Will also cannot be accepted as they claimed benefit under the same Will. Therefore, the decision cited has no application to the

facts and circumstances of the case. It is trite law that subsequent events will have a direct bearing on the result of a litigation and relief should be moulded taking into consideration all the events. Undisputed is the proposition that the subject matter of the dispute is not in existence at present as the decree had been executed against the plaintiffs and the building had been demolished. Therefore, I find no substantial question law. Hence, both the appeals are dismissed.

A.HARIPRASAD, JUDGE.

AS