

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

MONDAY, THE 16TH DAY OF NOVEMBER 2015/25TH KARTHIKA, 1937

RSA.No. 1251 of 2014 (G)

**JUDGMENT DATED 9.7.2014 IN AS 84/2010 OF SUB COURT, OTTAPPALAM
JUDGMENT DATED 30.7.2010 IN OS 68/2001 OF MUNSIF MAGISTRATE'S COURT,
MANNARKAD**
.....

APPELLANT(S)/APPELLANTS/PLAINTIFFS:

- 1. PARVATHI AMMAL, AGED 71 YEARS, (DIED)
W/O.BOTTAYYA KOUNDER AND D/O.RAMAPPA KOUNDER,
VELLIYANKODE KANDIYOOR, KOMBARAM PALAYAM,
METTUPALAYAM TALUK, COIMBATORE DISTRICT,
TAMILNADU STATE.**
- 2. K.B.RAJAPPAN, AGED 56 YEARS,
S/O.PARVATHY AMMAL, ...DO... ..DO...**
- 3. K.B.PONNUSWAMY, AGED 51 YEARS,
S/O.PARVATHY AMMAL, RESIDING AT 3/69,
CHENMARAM PALAYAM, PANCHAYAT, METTUPALAYAM TALUK,
COIMBATORE DISTRICT.**

[IMPLEADED & AMENDED AS PER ORDER IN IA 19/11 & 20/11 DATED 22/2/2011).

BY ADV. SRI.S.SHARAN

RESPONDENT(S)/RESPONDENTS/DEFENDANTS:

- 1. RAJAPPAN, AGED ABOUT 52 YEARS,
S/O.NANJAN, VADAKOTTATHARA DESOM, AGALI AMSOM,
MANNARKKAD TALUK - 678 582.**
- * 2. RANGAN, AGED ABOUT 77 YEARS,
S/O.AATTUKARAN @ RANGAN, ..DO... PIN-678 582. (DIED)
LRS RECORDED.**
- 3. CHELLAN, AGED ABOUT 43 YEARS
S/O.SAKALAN, ..DO.. PIN-678 582.**
- * AS PER THE ORDER DTD. 4.3.2015 VIDE MEMO CF 1147/2015 DTD.26.2.2015
IT IS RECORDED THAT THE SECOND RESPONDENT EXPIRED AND HIS
LEGAL HEIRS ARE 1 AND 3 AND NO NEED OF OTHER LEGAL HEIRS TO BE
IMPLEDED.**

R1 & R3 BY ADV. SRI.R.SREEHARI

**THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON
16-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

P.B.SURESH KUMAR, J.

R.S.A.No.1251 of 2014

Dated this the 16th day of November, 2015

JUDGMENT

The legal representatives of the deceased plaintiff in a suit for injunction is the appellant in the second appeal.

2. The plaintiff claimed title to the suit property based on an assignment deed executed by the second defendant and his mother Siva. According to the plaintiff, she is in possession of the suit property on the strength of the said assignment deed. It is alleged that the defendants have attempted to trespass into the suit property on 30.3.2001. The defendants resisted the suit. They denied the title of the plaintiff as also her possession over the suit

property. The trial court, on an appraisal of the materials on record, found that the plaintiff has not established possession over the suit property and the said decision of the trial court has been confirmed in appeal. The legal representatives of the plaintiff who are aggrieved by the concurrent decisions against them have thus come up in the second appeal.

3. Heard the learned counsel for the appellants.

4. It is beyond dispute that the suit in the instant case is a suit for injunction simplicitor. The only question arises for consideration in a suit for injunction is as to whether the plaintiff is in possession of the suit property. The courts below concurrently found that the plaintiff has not established possession over the suit property. The question as to whether a particular person is in possession of an item of property is a pure question of fact. As such,

the decisions on the said question cannot be challenged in a second appeal filed under Section 100 of the Code of Civil Procedure.

In the result, the second appeal is dismissed *in limine*. However, it is made clear that this decision will not preclude the plaintiff from instituting a fresh suit based on title. All the interlocutory applications in the appeal are closed.

P.B.SURESH KUMAR, JUDGE.

smm