

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

MONDAY, THE 2ND DAY OF NOVEMBER 2015/11TH KARTHIKA, 1937

RSA.No. 1334 of 2014

A.S.NO.98/2011 OF II ADDITIONAL DISTRICT COURT, KOLLAM

O.S.NO.938/2009 OF PRINCIPAL MUNSIFF COURT, KOLLAM

APPELLANT(S)/APPELLANTS/DEFENDANTS :

- 1. K.VIJAYAN, AGED 59 YEARS,
S/O.KRISHNAN ACHARY, ALAZHIKATHU VEEDU,
KANNANALLOOR CHERRY, KANNANALLOOR P.O.,
THRIKKOVILVATTOM VILLAGE, KOLLAM-691 576.**
- 2. RADHAMANI, AGED 49 YEARS,
W/O.VIJAYAN, ALAZHIKATHU VEEDU, KANNANALLOOR CHERRY,
KANNANALLOOR P.O., THRIKKOVILVATTOM VILLAGE,
KOLLAM-691 576.**

**BY ADVS.SRI.C.HARIKUMAR
SMT.C.B.ANUROOPA**

RESPONDENT(S)/RESPONDENT/PLAINTIFF :

**ABDUL SALAM, AGED 63 YEARS,
S/O.IBRAHIM KUTTY, NAZAR MANZIL, KANNANALLOOR P.O.,
KOLLAM - 691 576.**

**THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION
ON 02-11-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

Msd.

P.B.SURESH KUMAR, J.

R.S.A.No.1334 of 2014

Dated this the 2nd day of November, 2015

JUDGMENT

The defendants in a suit for injunction are the appellants in the second appeal.

2. The case of the plaintiff is that he is the owner in possession of the plaint schedule property by virtue of Ext.A1 sale deed and that the defendants are attempting to trespass into the same. The defendants resisted the suit. According to them, the suit property belong to them. The case set by the defendants was that they had executed a sham sale deed in respect of the suit property in favour of one Vimalakumari Amma towards security of a sum of Rs.26,000/- borrowed from her and Vimalakumari Amma executed a sale deed in respect of the suit property on the

strength of the said sham document in favour her husband, Sasidharan Pillai pretending that she is the owner of the property. According to the defendants, the document, on the basis of which the plaintiff sets up title to the property, is a document executed by Sasidharan Pillai and therefore, the plaintiff has not acquired any right in the property. The trial court accepted the case of the plaintiff and decreed the suit. Though the matter was taken up in appeal, the appellate court, on a re-appraisal of the evidence, on record confirmed the decision of the trial court. The defendants 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. The materials on record indicate that though the defendants had earlier filed a suit as O.S.No.1104 of 2001 before the Munsiff's Court, Kollam seeking a declaration that the sale deed executed by them in respect of the property in

favour of Vimalakumari Amma is null and void, the said suit was dismissed. It is also seen that though the defendants have taken up the matter in appeal, they did not pursue the appeal and consequently, the appeal was dismissed for default. In the light of the decision in the said suit, the defendants cannot be heard to contend that they have not transferred the suit property to Vimalakumari Amma. It is beyond dispute that Vimalakumari Amma conveyed the property to Sasidharan Pillai and Sasidharan Pillai, in turn, conveyed the property to the plaintiff. The contention raised by the defendants before the courts below is that despite the sale deed executed by them in respect of the property, they are in possession of the property. First of all, their possession of the plaint schedule property was based on their title. Once it is found that they had transferred the suit property, they cannot be heard to contend any more that they are in possession of the suit property. In the said view

of the matter, I do not find any reason to interfere with the decisions of the courts below. There is no question of law, much less any substantial question of law, involved in the second appeal. The second appeal, in the circumstances, is devoid of merits and the same is accordingly dismissed. All the interlocutory applications in the appeal are closed.

P.B.SURESH KUMAR, JUDGE.

smm