

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

MONDAY, THE 25TH DAY OF MAY 2015/4TH JYAISHTA, 1937

SA.No. 644 of 2001 ( )

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AS.NO. 54/1995 OF PRL.DISTRICT COURT,THALASSERY

OS.NO. 398/1991 OF MUNSIF COURT, KUTHUPARAMBA  
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APPELLANT/RESPONDENT/PLAINTIFF :

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KANUMARATH PRASANNA,D/O.KUNHIRAMA KURUP,  
VEKKALAM AMSOM, VAYANNUR DESOM,  
KELAYAD PANCHAYATH WARD NO.2, ALACHERRY.P.O.,

BY ADVS.SRI.CIBI THOMAS  
SRI.O.RAMACHANDRAN NAMBIAR

RESPONDENT(S)/APPELLANT/DEFENDANT:

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\*THACHARATH GOVINDAN ADIYODI,S/O.RAMAN NAMBIAR,  
VEKKALAM AMSOM, VAYANNUR DESOM, KOLAYAD PANCHAYATH,  
ALACHERRY.P.O. (DIED)

\*ADDL.R2 TO R12 IMPEADED

\*ADDL.R2: T. KUNHIRAMAN,AGED 60 YEARS,  
ANILA NIVAS, VAYANNUR.P.O., KANNUR.

\*ADDL.R3: M.V.RADHAKRISHNAN,AGED 56 YEARS, RESIDING -DO-

\*ADDL.R4: M.V.SURENDRAN, AGED 54 YEARS, RESIDING -DO-

\*ADDL.R5: VALSALA,AGED 50 YEARS, RESIDING -DO-

\*ADDL.R6: SOBHANA,AGED 48 YEARS, RESIDING -DO-

\*ADDL.R7: SATHI, AGED 46 YEARS, RESIDING -DO-

\*ADDL.R8: PARVATHI, AGED 44 YEARS, RESIDING -DO-

\*ADDL.R9: RAMACHANDRAN, AGED 42 YEARS, RESIDING -DO-

\*ADDL.R10: RAJEEVAN, AGED 40 YEARS, RESIDING -DO-

SA.NO.644/2001

\*ADDL.R11: ARAVINDAKSHAN,AGED 36 YEARS, RESIDING -DO-

\*ADDL.R12: ANILA, AGED 33 YEARS, RESIDING -DO-

\*ADDL.R2 TO R12 ARE IMPEADED AS LR'S OF DECEASED SOLE  
RESPONDENT AS PER ORDER DATED 6/3/2014 IN IA.NO.3266/2013.

\*ADDL.R13 IMPEADED

\*ADDL.R13: T. SAROJINI, ANILA NIVAS, VAYANNUR.P.O.,  
KANNUR-670 650

\*IS IMPEADED ADDL.R13 BEING THE LEGAL HEIRS OF DECEASED SOLE  
RESPONDENT AS PER ORDER DATED 20/3/2014 IN IA.NO.750/2014.

R2 TO R13 BY SRI.T.SETHUMADHAVAN,SENIOR ADVOCATE  
ADDL.R2 TO R13 BY ADV. SRI.K.MOHANAKANNAN  
ADDL.R2 TO ADDL.R5 & ADDL.R7 TO ADDL.R12 BY ADV.SMT.A.R.PRAVITHA

THIS SECOND APPEAL HAVING BEEN FINALLY HEARD  
ON 04-12-2014, THE COURT ON 25-05-2015 DELIVERED  
THE FOLLOWING:

sts

**SA.NO.644/2001**

**APPENDIX**

**PETITIONER'S ANNEXURES:**

**ANNEX 1      COPY OF THE EXPLANATION SUBMITTED BY THE PETITIONER.**

**RESPONDENT'S ANNEXURES:                      NIL**

**/TRUE COPY/**

**P.A.TO JUDGE**

**sts**

**A.V. RAMAKRISHNA PILLAI, J.**

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**S.A. No. 644 of 2001**  
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**Dated this the 25<sup>th</sup> day of May, 2015**

**J U D G M E N T**

The plaintiff in OS No.398/1991 on the file of the Munsiff's Court, Koothuparamba, who, in turn, was the respondent in AS No.54/1995 on the file of the District Court, Thalassery, is in appeal.

2. The appellant approached the trial court for declaration of title over the plaint schedule property with the suit for permanent prohibitory injunction alleging as follows;

Plaint A schedule property originally belonged to the plaintiff's maternal grandfather on the basis of a 'kuzhikanam right'. Later, he obtained title to the property through the proceedings of the Land Tribunal. Later, he gifted plaint A schedule property to Devaki Amma, who is the mother of the plaintiff, in the

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year 1986. Subsequently, in the same year, Devaki Amma gifted the same to the plaintiff. According to the plaintiff, she was in absolute enjoyment of the plaint schedule property. She alleges that later, she constructed a house in the property and she is staying there with the family. In addition to the house, there is a shed for keeping sheep as well as a shed for storing timber. She has made some improvements in the property. The plaint schedule property is on the western boundary of the property of the defendant. For separating the two properties, a boundary was made by placing boundary stones in a row. However, the defendant removed the stones two weeks prior to the filing of the suit. The plaintiff made a complaint to the local police, but, it was of no use. Again on 30.10.1991, the defendants attempted to trespass into the plaint schedule property, cut and removed valuable

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trees. She alleged that the defendant has no right to do so.

3. Though the suit as it originally stood was one for injunction simplicitor, subsequently, it was amended for declaration of title and consequential injunction.

4. In the written statement filed by the defendant, he has disputed the identity of the property. According to them, it was contended that the property of the plaintiff is bounded on the east by a canal like portion called 'Aani' and beyond that, the plaintiff is not having any property. It was contended that under the cover of title deed, the plaintiff is attempting to grab possession of the properties of the defendant.

5. The trial court raised proper issues for trial; and at the trial, PWs 1 and 2 as well as DWs 1 and 2 were examined. Exts.A1 to A7, B1 to B5 as well as C1 to C4 were marked. The trial court, after appreciating evidence, granted a decree of injunction only.

6. The defendant took the matter in appeal before

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the lower appellate court, which, after re-appreciation of evidence, set aside the decree of injunction by the trial court. It is with this background, this regular second appeal is filed.

7. I have heard Mr.O.Ramachandran Nambiar, the learned counsel for the appellant and Mr.T.Sethumadhavan, the learned senior counsel for the respondent.

8. It is crucial to note that the main dispute between the parties is regarding the identity of the properties. Since the identity of the properties is disputed by the defendant, a commission was taken. Ext.C4 is the plan submitted by the Commissioner. In Ext.C4, ten plots are marked by the Commissioner, i.e., A, A1, A2, B, B2, B3, C, C1, C2 & C3. According to the plaintiff, A, A1, A2 as well as B, B2 & B3 in C4 plan constitute plaintiff A schedule property. Out of these, plots A and B2 are set apart for a road and are now being used as road. No relief is sought for in respect of those plots.

The defendant is denying title of the plaintiff over plots, B and B3. It was on account of these, the plaint was amended claiming reliefs in respect of those plots. The dispute is only with respect to B and B3 plots in Ext.C4 plan.

9. The only question is whether plots, B & B3, form part and parcel of plaint A schedule property. In the amended plaint, it was specifically pleaded that if the court finds that the defendant is in possession of Exts.B & B3 plots, the plaintiff is seeking recovery of those plots on the strength of her title. According to the defendant, there is a canal like portion ('Aani') between A, A1 & A2 plots as well as B, B2 & B3 plots, which is the boundary line demarcating the properties.

10. Mr.Ramachandran Nambiar, the learned counsel for the appellant, submitted that the canal like area ('Aani') is formed on account of the water flow during raining season from the northern side of the properties, which is lying at a high level and it is not the

boundary of properties. Mr.T.Sethumadhavan, the learned senior counsel for the respondent, referring to Ext.B6 additional document, would submit that the so called canal like area ('Aani') is the eastern boundary of the plaintiff's property as there is a clear admission in Ext.B6. Ext.B6 is the copy of the plaint in OS No.350/1988, which was a suit filed against the heirs of one Kunjappa Kurup, who has got property on the northern side of the plaint schedule property. The suit was one for permanent prohibitory injunction restraining the defendants and their men from trespassing into the appellant's property and restraining from causing any obstruction to the peaceful enjoyment of the appellant. Later, the suit was settled out of court and the case was closed without conducting any trial. It can be seen that there was an admission in para 2 of the plaint that on the eastern side of the property of the appellant, there is a canal portion ('Aani').

11. In answer to the said submission,

Mr.Ramachandran Nambiar submitted that on the western portion of the northern boundary of the property of the appellant, Kunhappa Kuruppu, who was the predecessor in interest of the defendant in OS No.350/1988, has property; and on the eastern portion of the northern boundary of the appellant's property, there is property of Thacharath KunhIRaman. Therefore, according to Mr.Ramachandran Nambiar, both Kunjappa Kuruppu and Thacharath KunhIRaman have properties on the northern boundary of the appellant's property. Mr.Ramachandran Nambiar further pointed out that the 'Aani' on the eastern boundary of the Kunjappa Kuruppu, though can be treated as the boundary of the property of Kunjappa Kurup, as the 'Aani' flows towards south, the said 'Aani' flows through the property of the appellant; and therefore, it cannot be treated as the boundary of the properties of the appellant and the respondent. However, going by Ext.C4 plan, the said submission cannot be accepted. Because, as per the present lie, the appellant's

property is bounded on the northern side by the property now in the possession of the wife and children of Kunjappa Kuruppu. The eastern boundary of the said property as well as the property now in possession of the appellant lie in a straight line. It can also be seen that separating A plot and the road on the southern side, a retaining wall is constructed in east-west direction and at the point, where the canal like portion ('Aani') touches the road, the retaining wall turns towards north separating A plot and B plot. This is an indication that the low lying area, 'Aani', is the boundary lying between the property of the plaintiff and the defendant. This fact has been correctly appreciated by the lower appellate court on the basis of facts placed before it.

12. The lower appellate court has rightly found that the disputed portions, B and B3 plots, are in the possession of the defendant. Once it is found that the possession of those plots are with the defendant, the trial court was not justified in granting the decree and

injunction; and therefore, the lower appellate court has reversed the same. It is also relevant to note that though the trial court has granted only an injunction and has not granted a decree for recovery of possession, the plaintiff has not challenged the said decision. Therefore, now the appellant/plaintiff cannot seek recovery of possession of B & B3 plots. On a consideration of the entire materials now placed on record, this Court is of the definite view that the appellant is not entitled to succeed.

In the result, the appeal fails; and accordingly, it is dismissed.

Sd/-  
**A.V. RAMAKRISHNA PILLAI**  
**JUDGE**

bka/-

//True copy//

PA to Judge