

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR**

**MONDAY, THE 28TH DAY OF SEPTEMBER 2015/6TH ASWINA, 1937**

**SA.No. 649 of 2002 ( )**  
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**AS 62/1996 of ADDL.SUB COURT, IRINJALAKUDA  
OS. 370/93 OF MUNSIF COURT, KODUNGALLUR**  
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**APPELLANT/RESPONDENT/PLAINTIFF::**  
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**ABOOBACKER, S/O. AMMUNJI,  
AGED 55 YEARS, KALLINGAL HOUSE,  
AZHIKKODE P.O., KODUNGALLUR, THRISSUR (DT.).**

**BY ADV. SRI.RENJITH THAMPAN (SENIOR ADVOCATE)**

**RESPONDENTS/APPELLANTS/DEFENDANTS::**  
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- 1. STATE OF KERALA,  
REPRESENTED BY CHIEF SECRETARY, SECRETARIAT,  
THIRUVANANTHAPURAM.**
- 2. THE DISTRICT COLLECTOR,  
AYYANTHOLE, THRISSUR.**
- 3. THE ASSISTANT EXECUTIVE ENGINEER,  
P.W.D. ROAD, KODUNGALLUR.**

**R1 TO R3 BY GOVERNMENT PLEADER SRI. JOBY JOSEPH**

**THIS SECOND APPEAL HAVING COME UP FOR ADMISSION  
ON 28-09-2015, THE COURT ON THE SAME DAY DELIVERED  
THE FOLLOWING:**

**bp**

**P.B.SURESH KUMAR, J.**

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**S.A.No.649 of 2002.**

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Dated this the 28<sup>th</sup> day of September, 2015.

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

The plaintiff in a suit for declaration of title and injunction is the appellant. The first defendant in the suit is the State and the second defendant is the District Collector, Thrissur. The third defendant is the Assistant Executive Engineer of the Public Works Department.

2. The case of the plaintiff is that the suit property belonged to one Ayyaril Karikkulath Kochu Moideen Sahib; that the father of the plaintiff started residing in the suit property by constructing a hut in the year 1953 and that he is in possession of the suit property in continuation of the possession of his father from the year 1965 onwards. According to the plaintiff, the defendants are attempting to evict him from the suit property on the premise that it is a puramboke land. It is alleged by the plaintiff that the suit

property is not a puramboke land and that if at all the Government have any right over the same, the same is lost by the adverse possession of the plaintiff. The defendants contested the suit. According to them, the suit property is a road puramboke and that the plaintiff is an encroacher. The case of the plaintiff that the suit property belonged to Ayyaril Karikkulath Kochu Moideen Sahib has been specifically denied by the defendants. The trial court though found that the suit property is a puramboke land, decreed the suit holding that the plaintiff has perfected title to the suit property by adverse possession and limitation. The appellate court reversed the finding of the trial court that the plaintiff has perfected title to the suit property by adverse possession and limitation and dismissed the suit. The plaintiff is aggrieved by the decision of the appellate court.

3. Heard the learned counsel for the appellant.

4. As noticed above, as regards the ownership

of the suit property, even the trial court found that the suit property is a Government land. The question therefore, is as to whether the plaintiff has perfected title to the suit property by adverse possession and limitation. It is trite that the plea of adverse possession can be raised only by a defendant in a suit for recovery of possession based on title. A suit for declaration of title on the plea of adverse possession is not maintainable. The present suit being a suit for declaration of the title of the plaintiff over the suit property by adverse possession and limitation, is not maintainable. The decision of the appellate court in dismissing the suit is therefore, in order. The Second Appeal is devoid of merits and the same is accordingly dismissed.

***Sd/-***  
**P.B.SURESH KUMAR,**  
**JUDGE.**

***Kvs/-***

*// True copy //*

***PA TO JUDGE.***