

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

FRIDAY, THE 6TH DAY OF NOVEMBER 2015/15TH KARTHIKA, 1937

SA.No. 666 of 2002 ()

**(AGAINST THE JUDGMENT AND DECREE IN AS.NO. 21/2000 OF SUB COURT,
KATTAPPANA DATED 16-10-2001)**

**(AGAINST THE JUDGMENT IN OS.NO. 331/1997 OF MUNSIF COURT, PEERUMEDU
DATED 03-02-2000)**

APPELLANT(S)/RESPONDENTS-DEFENDANTS:

- 1. GOPI, 49 YEARS, S/O.KESAVAN,
RESIDING AT NEDUMGATTU HOUSE,
KACHERIKUNNU BHAGOM,
PEERMADE VILLAGE, PEERMADE TALUK.**
- 2. PONNAMMA, 42 YEARS, W/O.GOPI,
RESIDING AT NEDUMGATTU HOUSE,
KACHERIKUNNU BHAGOM,
PEERMADE VILLAGE, PEERMADE VILLAGE.**

BY ADV. SRI.T.I.ABDUL SALAM

RESPONDENT/APPELLANT - PLAINTIFF:

**PENNAMMA, 65 YEARS, HOUSE WIFE,
W/O.RAJU, RESIDING AT CHENNAMKULAM HOUSE,
KODUNGOOR KARA, VAZHOOR VILLAGE,
CHANGANACHERRY TALUK, KOTTAYAM DISTRICT.**

BY ADV. SRI.T.V.GEORGE

**THIS SECOND APPEAL HAVING BEEN FINALLY HEARD
ON 06-11-2015, ALONG WITH SA.NO. 713 OF 2002, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:**

sts

P.B.SURESH KUMAR, J.

Second Appeal Nos.666 & 713 of 2002

Dated 6th November, 2015.

J U D G M E N T

These second appeals are preferred challenging the common judgment in A.S.Nos.21 and 68 of 2000 on the file of the Sub Court, Kattappana. Among the said appeals, A.S.No.21 of 2000 was preferred challenging the decree and judgment in O.S.No.331 of 1997 and A.S.No.68 of 2000 was preferred challenging the decree and judgment in O.S.No.326 of 1997. The original suits were suits on the files of the Munsiff Court, Peermade. Appellants in S.A.No.666 of 2002 are the defendants in O.S.No.331 of 1997. Since the suits were tried jointly treating O.S.No.331 of 1997 as the lead case, I am referring to the parties in this judgment, as they appear in O.S.No.331 of 1997.

2. O.S.No.331 of 1997 is a suit for injunction. The case of the plaintiff in the said suit is that she has acquired title

to the plaint schedule property measuring 45 cents as per Ext.A2 patta issued under the Land Assignment Act. It is alleged in the plaint that the plaint schedule property was a Government land in the possession of the first defendant; that the first defendant transferred the plaint schedule property to one Sivadas and that the plaintiff obtained possession of the same from Sivadas. The second defendant is the wife of the first defendant. The defendants resisted the suit contending that the first defendant is in possession of 1 acre and 20 cents of Government land and that the plaintiff has not obtained possession over any portion of the same as claimed by her at any point of time. They also contended that Ext.A2 patta obtained by the plaintiff under the Land Assignment Act is bogus. In the written statement filed by the defendants, they also raised a counter claim to declare that Ext.A2 patta obtained by the plaintiff in respect of the suit property is invalid. Prior to the institution of the suit, the first defendant had filed O.S.No.326 of 1997, seeking a decree of prohibitory injunction against one Chellappan and two others alleging that

they are trying to trespass into the suit property, viz., 1 acre and 20 cents in his possession. The plaintiff was subsequently impleaded in the said suit as the additional fourth defendant. On an evaluation of the materials on record, the trial court found that the plaintiff has not established that the plaint schedule property is a property in respect of which the plaintiff got assignment as per Ext.A2 patta. The trial court also found that the plaintiff has not established possession over the plaint schedule property. The trial court further found that the defendant has not established that Ext.A2 Patta obtained by the plaintiff is invalid. The trial court further found that the first defendants have not established possession over the suit property in O.S.No.326 of 1997. In the light of the aforesaid findings, the trial court dismissed both the suits as also the counter claim in O.S.No.331 of 1997. The first defendant challenged the decree and judgment in O.S.No.326 of 1997, in A.S.No.68 of 2000. The first defendant however, did not challenge the decision on the counter claim in O.S.No.331 of 1997. The plaintiff challenged the decision in O.S.No.331 of

1997 in A.S.No.21 of 2000. A.S.Nos.21 of 2000 and 68 of 2000 were heard together and disposed of by a common judgment by the appellate court, holding that in so far as no appeal was preferred against the decision in the counter claim in O.S.No.331 of 1997, the first defendant cannot be heard to contend that Ext.A2 patta obtained by the plaintiff under the Land Assignment Act is invalid. The appellate court also found based on Ext.B7 mahazar prepared by the authorities under the Land Assignment Act while issuing Ext.A2 patta that the plaintiff schedule property is the property in respect of which the plaintiff got title by virtue of Ext.A2 patta. The appellate court also found that the first defendant was not able to show that he is in possession of the suit property in O.S.No.326 of 1997. Consequently, the appellate court dismissed A.S.No.68 of 2000 and allowed A.S.No.21 of 2000 and passed a decree in O.S.No.331 of 1997 restraining the defendants from trespassing into the suit property therein. The defendants in O.S.No.331 of 1997 and the plaintiff in O.S.No.326 of 1997 have thus come up in these second appeals.

3. Heard the learned counsel for the appellants as also the learned counsel for the respondents.

4. There is no dispute to the fact that the counter claim raised by the defendants in O.S.No.331 of 1997 challenging Ext.A2 patta issued to the plaintiff under the Land Assignment Act has been dismissed by the trial court and the said decision has become final. As such, the appellate court is right in holding that the defendants in O.S.No.331 of 1997 cannot be heard to contend that Ext.A2 patta obtained by the plaintiff is invalid. Then the only question is as to whether the plaintiff has established that Ext.A2 patta is in respect of the plaint schedule property in O.S.No.331 of 1997. Ext.B7 document produced by the defendants is the mahazar prepared by the authorities under the Land Assignment Act while issuing Ext.A2 patta to the plaintiff. The boundaries of the properties in respect of Ext.A2 patta issued to the plaintiff have been specifically stated in the mahazar. The boundaries of the properties in respect of which Ext.A2 patta has been issued to the plaintiff tallies with the boundaries of the plaint schedule

property. As such, it cannot be said that Ext.A2 patta is not in respect of the plaint schedule property. If Ext.A2 patta is in respect of the plaint schedule property, it cannot be said that the decision of the appellate court in decreeing O.S.No.331 of 1997 is incorrect or faulty, in any manner.

In the result, there is no merit in these second appeals and the same are, accordingly, dismissed. All the interlocutory applications in the appeals are closed.

Sd/-

P.B.SURESH KUMAR, JUDGE.

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