

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

TUESDAY, THE 3RD DAY OF FEBRUARY 2015/14TH MAGHA, 1936`

SA.No. 836 of 2002 ()

AGAINST THE JUDGMENT AND DECREE IN A.S.NO. 91/1999 of SUB COURT,
NEDUMANGAD DATED 16-03-2002

AGAINST THE JUDGMENT AND DECREE IN O.S.NO. 703/1996 of PRINCIPAL MUNSIFF
COURT,NEDUMANGAD DATED 24-09-1999

APPELLANT(S)/RESPONDENT/PLAINTIFF::

KARUNAKARAN, S/O. SANKU,
GEETHA MANDIRAM, MUKKUNNOOR, MUDAKKAL MURI
NELLANADU VILLAGE.

BY ADV. SRI.R.S.KALKURA

RESPONDENT(S)/APPELLANT/DEFENDANT::

RAMANAN, S/O. RAMAKRISHNAN,
AGED 47, RESIDING AT KOLLAVILAKATHU VEEDU, ALANCHARA
KUDAKKAL MURI, NELLANAD VILLAGE.

BY ADV. SRI.K.B.PRADEEP

THIS SECOND APPEAL HAVING BEEN FINALLY HEARD ON 03-02-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

A.HARIPRASAD, J.

S.A. No.836 of 2002

Dated this the 3rd day of February, 2015

JUDGMENT

Appellant is the plaintiff in O.S.No.703 of 1996 on the file of Munsiff's Court, Nedumangad. The suit is one for declaration of title and fixation of boundary. The trial court decreed the suit. The defendant preferred an appeal before the lower appellate court in which the decree of the trial court was reversed and the suit was dismissed. Feeling aggrieved, the plaintiff has come up in this second appeal. The substantial question of law raised in this second appeal is whether the lower appellate court went wrong in appreciating evidence, which resulted in a perverse finding?

2. Heard the learned counsel for the appellant and the learned counsel for the respondent.

3. Facts relevant for disposal of the case, in short, are as follows: The appellant claims title in respect of the plaint schedule property as per Ext.A1 assignment deed. In the plaint schedule property, there is a shop room situated facing a road on western side. The appellant contended that the property belonging to the respondent is on the northern side of the plaint schedule property. It is the case of the appellant that there was a mud wall separating these two properties which withered away due to

vagaries of weather. According to the appellant, the southern wall of the building owned by the respondent is situated one link away from the northern boundary of the plaint schedule property. The defendant was not agreeable for fixing the boundary line separating the plaint schedule property and his property, which resulted in the suit.

4. The respondent resisted the plaint claim. He contended that the appellant's case that there was a mud wall separating their properties was found against by Ext.B4 judgment. That apart, the descriptions in the plaint schedule are not correct. The appellant is not entitled to get the declaration prayed for.

5. Learned counsel for the appellant contended that the commissioner's plans and reports and the depositions of commissioner and surveyor would clinch the issue. Ext.C1 series are the plans and reports relevant for our purpose. In Ext.C1(a) the commissioner had identified the plaint property and shown in red colour. The side measurements of the property are northern side (east-west) 30 links, southern side (east-west) 30 links, western side (north-south) 32 links and eastern side (north-south) 23 links. If we look into the plaint schedule, it can be seen that the claim made by the appellant is only in respect of a property admeasuring 30 links north-south measurement on the western side. The descriptions in Ext.A1 is slightly different from the measurement shown by the commissioner in

Ext.C1(a) plan.

6. Learned counsel for the respondent contended that even though the plaint was amended subsequent to the filing of commissioner's report, no attempt was made by the appellant/plaintiff to amend the schedule. It is interesting to note that the measurements of the property shown in the plaint schedule do not tally either with the measurements in Ext.A1 or that in Ext.C1(a) plan. Learned counsel for the respondent argued that if we discard the discrepancy in the measurements in Ext.A1 and Ext.C1(a), the prayer in the suit for fixation of boundary may work out injustice to the respondent/defendant. Unless it is specifically decided as to where the north-western corner of the property is to be located, it will be improper to grant any relief. This assumes importance for the reason that the entire property in the plaint schedule is occupied by a building. That apart, the property is only a narrow strip of land having a small extent. Any mistake in the measurement will have a great impact on the rights of the parties. It is true that many contentions have been raised by both sides at the time of hearing the appeal. But, I am of the view that since there is lack of clarity in respect of identification of the property, it may not be proper for this Court to decide the issue without properly identifying the property, especially there are some incongruities between Ext.A1, Ext.C1(a) and the plaint schedule. Therefore, the only way out is to remit the matter to the

trial court for properly identifying the subject matter of dispute. Even though elaborate evidence has been adduced, I do not find any clinching evidence explaining the discrepancy in the measurements borne out from the records in the case. Therefore, I am of the view that the parties must be given an opportunity to explain the discrepancy mentioned above. For that matter, a remand is the only course open. Without delving into other issues, the matter is remitted back to the lower court and the parties are at liberty to adduce evidence to substantiate their contentions.

In the result, the appeal is allowed. Impugned judgment and decree passed by the first appellate court is set aside. The matter is remitted back to the trial court for a de novo consideration after allowing the parties to adduce evidence, if any, to substantiate the discrepancy in measurement in Ext.A1 and Ext.C1(a). The lower court shall dispose of the case as expeditiously as possible, at any rate, within a period of six months. The parties shall appear before the court below on 18.02.2015.

A. HARIPRASAD, JUDGE.

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A.Hariprasad, J.

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JUDGMENT

3rd February, 2015