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Devaki Ammal, vs **Mohammed Alias Vappu

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SooperKanoon Citation : sooperkanoon.com/1281665

Court : Kerala

Decided On : May-21-2025

Judge : Honourable Mr. Justice M.a.Abdul Hakhim

Appeal No. : SA/294/1996

Appellant : Devaki Ammal,

Respondent : **Mohammed Alias Vappu

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR WEDNESDAY,THE 09TH DAY OF JANUARY 2019 / 19TH POUSHA, 1940 AGAINST THE JUDGMENT AND DECREE IN AS 63/1988 of DISTRICT COURT, PALAKKAD DATED 02-02-1995 AGAINST THE JUDGMENT AND DECREE IN OS 79/1984 of SUB COURT, OTTAPPALAM DATED 17-12-1987 APPELLANT/RESPONDENT/PLAINTIFF: DEVAKI AMMAL, AGED 64,W/O.APPU GUPTHAN, CHUNDATH PALOTTIL, RESIDING AT THACHANATTUKARA, MANNARKKAD, PALAKKAD DISTRICT. BY ADV. SRI.T.M.MOHAMMED YOUSUFF(SR.) AYSHA YOUSUFF, MOLLY JACOB, ABDUL SAMAD AND UMA.K.CHETTUNCHERIL

RESPONDENTS/APPELLANTS/DEFENDANTS:

*1 MOHAMMED ALIAS VAPPU (DIED -LEGAL HEIRS IMPLEADED) S/O.KUNNATH VEERAPPU, AGED 55 YEARS,RESIDING AT THACHANATTUKARA, MANNARGHAT, PALAKKAD DISTRICT. **2 KHADSEEJAKUTTY UMMA, (DIED -LEGAL HEIRS IMPLEADED) AGED 65, D/O.KUNNANATH KUNHUNNY, RESIDING AT .DO. (IT IS RECORDED THAT THE 2ND RESPONDENT IS DEAD AS PER ORDER DATED 03.01.2013 IN MEMO DATED 07.11.2012 BEARING CF.NO.8726/2012) ***3 KUNHUNNI, (DIED -LEGAL HEIRS IMPLEADED) S/O.KHADEEJAKUTTY UMMA, AGED 40, -DO- 4 BEEKUTTY, W/O.LATE ALI, AGED 43, RESIDING AT THACHANATTUKARA, MANNARKKAD, PALAKKAD DISTRICT. 5 JAMEELA, AGED 23 YEARS, -DO- 6 AYISHA, AGED 21 YEARS, -DO-

7 VEERAPPU, AGED 19 YEARS, -DO- 8 MOHAMMED, AGED 18 YEARS, -DO- 9 NAZAR, AGED 16 YEARS, -DO- 10 HAMEED, AGED 12 YEARS, -DO- 11 RAZAK, AGED 10 YEARS, -DO- 12 MUJEEB, AGED 8 YEARS, -DO- *** ADDL. PATHUKUTTY, R13 AGED 50, W/O.PUTHUPARAMBIL KUNHUNNI,KUNNATHUNADU VEEDU,PALOD P.O., MANNARKKAD COLLEGE (VIA), PALAKKAD 678 583. ADDL. SULEKHA P., R14 AGED 35, W/O.HAMSA, KALAMBARAMBIL HOUSE, PALOD P.O., MANNARKKAD COLLEGE (VIA) PALAKKAD-678 583. ADDL. SOUDHA P., R15 AGED 33, W/O.SULAIMAN, KOLPPADAM,PALOD P.O., MANNARKKAD COLLEGE (VIA) PALAKKAD-678 583. ADDL. P.RAMLA, R16 AGED 30,PUTHUPARAMBIL,PALOD P.O., MANNARKKAD COLLEGE (VIA) PALAKKAD-678 583. ADDL. P.RASSIYA, R17 AGED 28, W/O.PUTHUPARAMBIL YOUSEFF,KOTTAPPADAM P.O.,MANNARKKAD COLLEGE (VIA) PALAKKAD-678 583. ADDL. P.SUMMAYYA, R18 AGED 26,W/O.ALI,THETTUMMAL HOUSE,PALOD P.O., MANNARKKAD COLLEGE (VIA) PALAKKAD-678 583. ADDL. P.JAMSHEENA, R19 AGED

25,W/O.MUBARAK,AALIPARAMBU,PERINTHALMANNA (VIA), MALAPPURAM-678 583. ADDL. MOHAMMED ALI,

R20 AGED 22, S/O.KUNHUNNI,KUNNATHUNADU VEEDU, PALOD P.O., MANNARKKAD COLLEGE (VIA) PALAKKAD-678 583. ADDL. P.SAITHALAVI, R21 AGED 21,S/O.KUNHUNNI, KUNNATHUNATHU VEEDU,PALOD P.O., MANNARKKAD COLLEGE (VIA) PALAKKAD-678 583. ADDL. MOHAMMED BASHEER, R22 AGED 19,S/O.KUNHUNNI, KUNNATHUNADU VEEDU,PALOD P.O., MANNARKKAD COLLEGE (VIA) PALAKKAD-678 583. ADDL. IBRAHIM, R23 S/O.KUNHUNNI, KUNNATHUNADU VEEDU,PALOD P.O., MANNARKKAD COLLEGE (VIA) PALAKKAD-678 583. *** ARE IMPLEADED AS LRS OF DECEASED R3 AS PER

ORDER DATED 19.02.2013 IN IA.1500/2009.

** ADDL. PARAKALLI ITHIMMA,

R24 AGED 65 YEARS, W/O.PARAKALLI ITHIMMU, KUNNANATTU VEETTIL, PALODU POST, MANARCAUD COLLEGE VIA, PALAKKAD DISTRICT. ADDL. PUTHUPARAMBIL YOUSEFF, R25 AGED 40 YEARS, S/O.KHADEEJAKUTTY, KUNNANATTU VEETTIL, PALODU POST, MANARCAUD COLLEGE VIA, PALAKKAD DISTRICT. **(THE LEGAL HEIRS OF DECEASED 2ND RESPONDENT ARE IMPLEADED AS ADDITIONAL RESPONDENTS 24 AND 25 AS PER ORDER DATED 24.10.2018 IN IA.NO.335/2013.) * ADDL. AYISHA, R26 W/O.LATE MOHAMMED @ BAPPU, AGED 66 YEARS, KUNNANATTU VEEDU, THACHANATTUKARA, PALOD P.O., MANNARKKAD COLLEGE (VIA), PALAKKAD -678 583. ADDL. ABDUL MAJEED, R27 S/O.LATE MOHAMMED @ BAPPU, AGED 45 YEARS, KUNNANATTU VEEDU, THACHANATTUKARA, PALOD P.O., MANNARKKAD COLLEGE (VIA), PALAKKAD -678 583. ADDL. MUHAMMED, R28 S/O.LATE MOHAMMED @ BAPPU, AGED 40 YEARS, KUNNANATTU VEEDU, THACHANATTUKARA, PALOD P.O., MANNARKKAD COLLEGE (VIA),

PALAKKAD -678 583.

ADDL. NOUPHAL, R29 S/O.LATE MOHAMMED @ BAPPU, AGED 30 YEARS, KUNNANATTU VEEDU, THACHANATTUKARA, PALOD P.O., MANNARKKAD COLLEGE (VIA), PALAKKAD -678 583. ADDL. ABDUL NAZAR, R30 S/O.LATE MOHAMMED @ BAPPU, AGED 27 YEARS , KUNNANATTU VEEDU, THACHANATTUKARA, PALOD P.O., MANNARKKAD COLLEGE (VIA), PALAKKAD -678 583. **** ADDL. KUNHUNNI PALOD (DELETED) R31 CHUNTHATHU PALOTTIL PALOD P.O., MANNARKKAD COLLEGE (VIA), PALAKKAD-678 583. **** ADDITIONAL RESPONDENT NO.31 IS DELETED FROM THE ARRAY OF PARTIES AT THE RISK OF THE APPELLANT AS PER ORDER DATED 09.01.2019 IN I.A NO.1/2018 ADDL. SARA, R32 W/O.RAYIN PALOD, AGED 25, D/O. MOHAMMED @ BAPPU, PALOD P.O., MANNARKKAD COLLEGE (VIA), PALAKKAD -678 583. ADDL. FATHIMA, R33 AGED 27, D/O.LATE MOHAMMED @ BAPPU,, PALOD P.O., MANNARKKAD COLLEGE (VIA), PALAKKAD -678 583. ADDL. SAFIYA, R34 AGED 24, W/O.IQBAL, D/O.LATE MOHAMMED @ BAPPU,, PALOD P.O., MANNARKKAD COLLEGE (VIA), PALAKKAD -678 583. ADDL. NAZRATH, R35 W/O.NAZAR, AGED 21, D/O.LATE MOHAMMED @ BAPPU,, PALOD P.O., MANNARKKAD COLLEGE (VIA), PALAKKAD -678 583. ADDL. RAMLA, R36 W/O.HAMEED, AGED 20, D/O.LATE MOHAMMED @ BAPPU,, PALOD P.O., MANNARKKAD COLLEGE (VIA), PALAKKAD -678 583. ADDL. RAHIYA, R37 D/O.LATE MOHAMMED @ BAPPU,, PALOD P.O., MANNARKKAD COLLEGE (VIA), PALAKKAD -678 583.

*(LEGAL HEIRS OF DECEASED 1ST RESPONDENT ARE

IMPLEADED AS ADDL.RESPONDENTS 26 TO 37 AS PER ORDER

DATED 24.10.2018 IN IA.3315/2017). BY ADVS. SRI.D.KRISHNA PRASAD SRI.V.R.KESAVA KAIMAL SMT.A.R.PRAVITHA SMT.S.SANTHY SRI.ABDUL SAMAD SRI.JOJI VARGHESE SRI.K.MOHANAKANNAN SRI.M.HARISHARMA

THIS SECOND APPEAL HAVING BEEN FINALLY HEARD ON 09.01.2019, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The plaintiff in the suit is the appellant in the second appeal.

2. The plaint B schedule property is part of

> the plaint A schedule property. A road is passing through the plaint A schedule property in the north-south direction. That portion of the plaint A schedule property which lies on the east of the road is the plaint B schedule property. The case of the plaintiff is that she obtained the plaint A schedule property in terms of Ext.A1 assignment deed executed by Kalamparambil Kunhayamu on 10.10.1957; that the plaint B schedule property is in her possession; that the suit filed by the plaintiff against the defendants earlier when the defendants attempted to trespass into the plaint B schedule property was dismissed by the court holding that the plaintiff has not established possession over the plaint B schedule property and hence the suit for recovery of possession of the plaint B schedule property from the defendants on the strength of the title of the plaintiff. The defendants

> contested the suit contending that the plaint B schedule property is in their possession as obtained by them in terms of Ext.B1 lease; that the plaintiff has no rights, whatsoever in the said property and that even if it is found that the plaintiff has any right in the plaint B schedule property, the same is lost by the adverse possession of the defendants. The defendants have also contended that they have obtained purchase certificates in respect of the plaint B schedule property on the basis of Ext.B1 lease, under the Kerala Land Reforms Act (the Act).

3. The trial court noticed that the orders of the

Land Tribunal based on which purchase certificates were issued to the defendants in respect of the plaint B schedule property were set aside by the appellate authority under the Act and the matter is still pending adjudication before the Land Tribunal. The court found that the plea of adverse possession taken by the defendants is unsustainable. The court also found that the plaint B schedule property is a part of the property covered by Ext.A1 assignment deed and that the same is

not covered by Ext.B1 lease deed. In the light of the said findings, the trial court decreed the suit as prayed for. The decree passed by the trial court was, however, subject to the orders to be passed by the Land Tribunal in the proceedings pending before it. The defendants challenged the decision of the trial court in appeal. In the appeal, they have also produced the orders passed by the Land Tribunal in their favour. It is seen that when the appeal was taken up, the learned counsel for the plaintiff conceded that in the light of decisions taken by the Land Tribunal, the appeal is only to be allowed in favour of the defendants. Consequently, the appellate court set aside the decision of the trial court and dismissed the suit. The plaintiff is aggrieved by the said decision of the appellate court. Hence the second appeal.

4. Heard the learned senior counsel for the appellant as also the learned counsel for the contesting respondents.

5. The learned senior counsel for the appellant contended that in so far as it is found by the trial court that the plaint B schedule property is one

covered by Ext.A1 assignment deed and not one covered by Ext.B1 lease deed, the decisions rendered by the Land Tribunal in the suo motu proceedings initiated at the instance of the defendants on the basis of Ext.B1 lease deed would not bind the plaintiff or the plaint B schedule property. Even otherwise, it was pointed out that in the light of the finding rendered by the trial court that the plaint B schedule property is not part

of the property covered by Ext.B1 lease deed, the purchase certificates obtained by the defendants in respect of the plaint B schedule property on the basis of Ext.B1 lease deed can only be a document vitiated by fraud and hence non est in the eye of law. It was also contended by the learned senior counsel that, at any rate, the orders obtained by the defendants from the Land Tribunal being orders passed during the pendency of the suit, the appellate court ought to have decided the matter on merits and ought not to have decided the matter in the light of the orders passed by the Land Tribunal based on the concession made by the learned counsel for the plaintiff.

6. Per contra, the learned counsel for the

contesting respondents submitted that the decree passed by the trial court in favour of the appellant was not an absolute decree. It was a decree with a rider. It was clarified therein that the same is subject to the decisions to be taken by the Land Tribunal in the two suo motu proceedings pending before it viz, S.M No.1941 of 1974 and S.M No.1943 of 1974. It was pointed out by the learned counsel that in so far as it was conceded that the said suo motu proceedings have culminated in orders in favour of the contesting respondents, the appellate court cannot be found fault with for having allowed the appeal preferred by the defendants.

7. In reply to the submission made by the

learned counsel for the contesting respondents, the learned senior counsel for the appellant contended that since the orders passed by the Land Tribunal are vitiated by fraud, that part of the decree passed by the trial court making the decision subject to the outcome of the proceedings before the Land Tribunal is non est in law and cannot be said to be a binding decision.

8. Having heard the learned counsel on

either side, the following substantial questions of law have been formulated for decision in the second appeal: i) Was the appellate court justified in disposing of the appeal preferred by the defendants based on the concession made by the counsel for the plaintiff? ii) Is the plaintiff bound by the decisions of the Land Tribunal referred to in the appellate

judgment?

iii) The effect, if any, of the rider in the judgment

of the trial court that the same is subject to the outcome of the proceedings pending before the Land Tribunal?

9. Question (i) : A close reading of the impugned

decision of the appellate court indicates beyond doubt that the appellate court was proceeding on the basis that in the light of the orders passed by the Land Tribunal, the suit is only to be dismissed as conceded by the counsel for the plaintiff. According to me, in a case of this nature, in so far as orders have been passed by the Land Tribunal in favour of the defendants pending suit, the correctness of the same ought to have been considered by the appellate court before

non suiting the plaintiff. In so far as the said course was not adopted by the appellate court, according to me, the matter has to go back to the appellate court for fresh consideration. The question is answered accordingly.

10. In so far as the matter is being remitted to

the appellate court, it is unnecessary to decide the remaining questions formulated for decision as those are essentially questions to be answered by the appellate court at the first instance.

11. In the circumstances, the impugned

decision of the appellate court is set aside and A.S No.63 of 1988 is remitted to the appellate court for fresh disposal. In so far as the appeal is one arising from a suit of the year 1984, it is directed that the appellate court shall dispose of the appeal as expeditiously as possible, at any rate, within two months from the date of receipt of a copy of this judgment. Parties shall appear before the appellate court on 20.02.2019. Sd/- P.B.SURESH KUMAR JUDGE

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