

Joseph, (Died) vs Joseph,

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SooperKanoon Citation : sooperkanoon.com/1906674

Court : Kerala

Decided On : Apr-04-2019

Judge : Honourable Mr. Justice P.Somarajan

Appeal No. : RSA/865/2004

Appellant : Joseph, (Died)

Respondent : Joseph,

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.SOMARAJAN
THURSDAY, THE 04TH DAY OF APRIL 2019 / 14TH CHAITHRA, 1941
AGAINST THE JUDGMENT AND DECREE DATED 27-02-2004 IN AS
6/2002 of 5TH ADDITIONAL DISTRICT COURT, ERNAKULAM
AGAINST THE JUDGMENT AND DECREE DATED 14-06-2000 IN OS
468/1993 of ADDITIONAL MUNSIF COURT, RCC, ERNAKULAM
APPELLANT/RESPONDET/PLAINTIFF:

1 JOSEPH, (DIED) AGED 65 YEARS S/O.PANAKKAL AUGUSTINE,
MOOLAMPILLY DESOM, KADAMAKKUDY VILLAGE, KANAYANNUR
TALUK. 2 ELIZEBATH JOSEPH, AGED 80 YEARS W/O. LATE

JOSEPH, PANAKKAL HOUSE, MOOLAMPILLY, KOCHI- 27. 3 MARY BENEDICT, AGED 56 YEARS D/O. LATE JOSEPH, ETTAMMATHUPARAMBIL, KOTTUVALLY, KAITHARAM P.O., N. PARAVUR-683519. 4 ELSY JAMES, AGED 54 YEARS D/O. LATE JOSEPH, KOCHERY HOUSE, CHERANELLUR P.O., KOCHI. 5 SEENA JOSEPH, AGED 52 YEARS D/O. LATE JOSEPH, POOVANKERY, SABARMATHI LANE, PALARIVATTOM. 6 RANI JOSEPH, AGED 50 YEARS D/O. LATE JOSEPH, VILLANASSERY HOUSE, PERUMANUR, KIZHAVANA ROAD, KOCHI-15.

7 GEORGE AUGUSTINE @ KUNJUMON, AGED 48 YEARS 8 P.J. THOMAS, AGED 46 YEARS 9 VICTORIA @ LINCY, AGED 44 YEARS D/O. LATE JOSEPH, PUZHAMANGALATH HOUSE, PACHALAM, KOCHI-12. 10 MINI NELSON, AGED 42 YEARS D/O. LATE JOSEPH, PUTHIYAKULANGARA, KUNDANNUR, MARADU. 11 P.J. VARGHESE@SOJAN, AGED 40 YEARS D/O. LATE JOSEPH, PANAKKAL HOUSE, MOOLAMPILLY, 12 ROSILY TESSY, AGED 38 YEARS D/O. LATE JOSEPH, EDATHIL HOUSE, PIZHALA, KOCHI-27. (LEGAL HEIRS OF DECEASED SOLE APPELLANT ARE IMPEADED AS ADDITIONAL APPELLANTS 2 TO 12 AS PER

ORDER DATED 24/10/2014 IN IA 2386/14)

SRI.A.X.VARGHESE SRI.A.V.JOJO RESPONDENT/APPELLENT/PLAINTIFF: JOSEPH, S/O.CHITHAPARAMBIL ANTHAPPAN, AGED 46 YEARS, VADUTHALA DESOM, CHERANALLOOR, VILLAGE, KANAYANNUR TALUK. SRI.N.M.MADHU SRI.V.R.KESAVA KAIMAL THIS REGULAR SECOND APPEAL HAVING BEEN FINALLY HEARD ON 04.04.2019, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Aggrieved by the decree and judgment of First Appellate Court, dismissing the suit, reversing the finding of the Trial Court, the plaintiff came up with this appeal.

2. The case of the plaintiff is that they obtained the plaint

schedule property having an extend of 78 cents. i.e. is 50 cents of the landed property and 28 cents of paddy field under an oral lease in the year of 1952 from one Raman Menon and were enjoying the leasehold right over the property. Whiles, the landlord Raman Menon sold the property to one Kalyani under Ext.A15. Thereon the plaintiff obtained the right of Kalyani under Ext.A14. But the document was executed in the name of father in law. Father in law is none else, the father of the defendant in the suit. Father passed away leaving defendant as one of the legal heirs. An application for referring the matter under section 125 of the Kerala Land Reforms Act 1963 was submitted before the Trial Court and it was dismissed by the Trial Court and no appeal was preferred against it. It is thereafter, the plaint was amended incorporating the pleading which constitute adverse possession and limitation which was found against by the First Appellate Court. Aggrieved by the said decree and judgment the plaintiffs came up with this Appeal.

3. The plaint pleading itself shows that plaintiff came into

possession of property by virtue of an oral lease. What is pleaded in the plaint is only a permissive possession of property referring to a title vested with Raman Menon. Now Kalyani, the beneficiary under Ext.A15 sale deed obtained right, title and interest over the property from Raman Menon and the father of the defendant in turn obtained the same under Ext.A14. The possession held by the plaintiff is referring to a title vested with Raman Menon and hence there cannot be an adverse possession and limitation unless there is a specific ouster pleaded and proved. No specific ouster pleaded or proved. As such the decree judgment of the First Appellate Court deserves no interference by this Court. Appeal lacks in merits and deserves only dismissal. The appeal is dismissed, but without costs. Sd/-
P.SOMARAJAN SCS JUDGE

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