

P.R.Soman Vs. Radha Devi

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SooperKanoon Citation : sooperkanoon.com/8589

Court : Kerala

Decided On : Dec-12-2014

Judge : Honourable Mr. Justice K.Abraham Mathew

Appellant : P.R.Soman

Respondent : Radha Devi

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW FRIDAY, THE 12^H DAY OF DECEMBER 2014 21ST AGRAHAYANA, 1936 FAO.No. 221 of 2012 ()
----- AGAINST THE

JUDGMENT

IN AS 212008 OF SUB COURT, KATTAPPANA DATED 1911-2011 AGAINST THE

JUDGMENT

IN OS 1962003 OF MUNSIF COURT, PEERMADE DATED 2501-2005
APPELLANTS/RESPONDENTS/DEFENDANTS:

----- 1.
P.R.SOMAN S/O.RAJENDRAN, PULLUKALAYIL HOUSE, KOKKAYAR VILLAGE
PEERMADE TALUK, IDUKKI DISTRICT, NOW RESIDING AT KORUTHODU
KUZHIMAVU, KUTTIKKAYAM-686513 2. VIJAYAKUMARI P.K. W/O.LATE
P.V.SURENDRAN, HOUSE NO 10646, SANTHI NAGAR KURIKKAD KARA AND

VILLAGE, KANAYANOOR TAULK NOW RESIDING AT SRUTHI APARTMENT, 2ND FLOOR, R.S.A.C.ROAD VYTTILLA- KOCHI-682019 3. JEEVAKUMARI D/O.LATE P.V.SURENDRAN AND VIJAYAKUMARI, HOUSE NO10646. SANTHI NAGAR, KURIKKAD KARA AND VILLAGE KANAYANOOR TAUk NOW RESIDING AT SRUTHI APARTMENT2D FLOOR R.S.A.C.ROAD, VYTTILA KOCHI-682019 4. SUNDARA PANDIAN ALIAS UNNI S/O.LATE P.V.SURENDRAN AND VIJAYAKUMARI, HOUSE NO10646, SANTHI NAGAR, KURIKKAD KARA AND VILLAGE KANAYANOOR TALUK, NOW RESIDING AT SRUTHI APARTMENT2D FLOOR R.S.A.C. ROAD VYTTILA KOCHI-682019 BY ADVS.SRI.N.SUBRAMANIAM SRI.M.S.NARAYANAN SRI.P.T.GIRIJAN FAO.No. 221 of 2012 () RESPONDENT/APPELLANT/PLAINTIFF:

----- RADHA DEVI D/O.SARASWATHI AMMA, PADINJATTU HOUSE, THRIKODITHANAM KARA, THRIKODITHANAM VILLAGE CHANGANACHERY TALUK, KOTTAYAM DISTRICT - 686105 R1 BY ADVS. SRI.SHAJI THOMAS SRI.N.NAGARESH SRI.BINU PAUL SRI.T.V.VINU THIS FIRST APPEAL FROM

ORDER

S HAVING BEEN FINALLY HEARD ON0711-2014, THE COURT ON1212-2014 DELIVERED THE FOLLOWING: shg/ K. ABRAHAM MATHEW, J.

----- F.A.O.No.221 of 2012 -----

- - Dated this the 12th day of December, 2014

JUDGMENT

What is challenged in this appeal is the legality of the order of remand passed in A.S.No.21/2008 on the file of the Sub Judge, Kattappana, which arose from O.S.No.196/2003 on the file of the Munsiff, Peermade. The respondent/plaintiff claimed ownership and possession of 20 cents comprised in survey No.67/2/4 D of Peermade Village, which is described in the plaint schedule. In the plaint it is stated that the property has well defined boundaries. On the allegation that the defendants 2 & 3, who are the owners of the adjoining northern property attempted to trespass into the plaint schedule property, the respondent instituted a suit for a perpetual injunction restraining trespass. Defendants 2 & 3 contended that they

are owners in possession of 51 cents comprised in survey No.176/1 in Peermade Village, the plaintiff's claim that she is in possession of the plaint schedule property is false and F.A.O.No.221 of 2012 -2- the property covered by her title deed takes in the property of defendants 2 & 3. The trial court found that the plaintiff failed to adduce sufficient evidence to prove her possession of the property and he dismissed the suit. In the appeal, the learned Sub Judge held that the plaintiff proved her title to the plaint schedule property, but the trial court failed to consider some relevant matters with regard to possession; he set aside the judgment and the decree and remanded the matter to the trial court.

2. The properties covered by the title deeds of the plaintiff and defendants 2 & 3 are different. The plaintiff's property is comprised in survey No.67/2/4 D and the property of defendants 2 & 3 in survey No.176/1. The extent of the property claimed by the plaintiff is 20 cents and by the defendants 2 & 3 is 51 cents. The boundaries are also different.

3. After the institution of the suit a commissioner inspected the property on 11.09.2003. The commissioner found that the property shown to him had no boundaries F.A.O.No.221 of 2012 -3- separating it from the northern and eastern properties. There was no cultivation in the property. There was an attempt to put up a shed in the property. Ext.C1 is the report of the commissioner and Ext.C1 (a) is the sketch attached to the report. On 05.11.2003 another commissioner inspected the property. He found that on the wall of the construction being made in the property, No.P3/117-A was seen written with chalk indicating that it is the number of that building. There was evidence of food being cooked. 200 coffee plants were seen in the plaint schedule property and in the adjoining of the property; 5 aracanut plants and a few plantains also were seen in the property. The facts noted by the commissioner definitely show that they were planted after the first commissioner visited the property. The building number was written subsequent to his visit.

4. I have no doubt that there was an attempt to create evidence to prove possession by one of the parties. Defendants 2 & 3 produced a receipt to prove that they paid F.A.O.No.221 of 2012 -4- building tax for the building situated in the

property. This was obtained during the pendency of the suit. It is not acceptable.

5. Since this is a suit for injunction, possession alone is relevant. But the nature of the property is such that the plaintiff is not able to prove exercise of any acts of possession. In such cases the presumption that possession follows title is applicable.

6. A commissioner along with a surveyor was deputed to measure the property. Ext.C2 is the report of the commissioner and Ext.C2 (a) the plan attached to it. The surveyor was examined as DW2. In his examination in chief he stated that he had a lithomap with him and it was on its basis he measured the property. But in the cross- examination he admitted that his statement is false. The western boundary of the plaint schedule property is Kottayam-Kumali PWD Road. The commissioner did not fix the boundary between road puramboke and the plaint schedule property. DW2 did not give any answer when he F.A.O.No.221 of 2012 - 5- was asked whether the plaint schedule property takes in the road puramboke. He did not fix the outer boundary of survey No.67. It is in spite of these facts the learned Sub Judge has observed in his judgment that the plaintiff has proved her title to the property. Ext.C2(a) plan is not at all correct and not acceptable. Ext.C2 report and Ext.C2(a) plan are rejected.

7. The learned Sub Judge remanded the case to the trial court with a direction to give opportunity to both parties to adduce evidence with regard to their claim of possession. Though I am satisfied that this was a fit case to remand the case to the trial court, the reasons stated by the learned Sub Judge cannot be approved of. The plaintiff may take steps to get the property identified on the basis of her title deed and the survey plan. The trial court shall make sure that only a competent and honest man is appointed Joint Commissioner. In the result, this appeal is dismissed. The trial court is directed to give an opportunity to the plaintiff to prove F.A.O.No.221 of 2012 -6- her title to the property by getting it identified on the basis of her title deed and the survey plan. The trial court shall appoint a competent and honest man as Joint Commissioner to measure the property. Sd/- K. ABRAHAM MATHEW JUDGE //True copy// P.A. TO JUDGE shg/