

**Sunil Mathew Vs. State**

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**SooperKanoon Citation :** [sooperkanoon.com/910442](http://sooperkanoon.com/910442)

**Court :** Kerala

**Decided On :** Nov-24-2010

**Judge :** M.N. Krishnan, J.

**Acts :** [Kerala Land Relinquishment Act 1958](#)

**Appeal No. :** A.S. NO. 333 OF 2001

**Appellant :** Sunil Mathew

**Respondent :** State

**Advocate for Pet/Ap. :** SRI.P.R.VENKETESH, Adv.

**Judgement :**

M.N. KRISHNAN, J.

A.S. NO. 333 OF 2001

Dated this the 24th day of November , 2010.

## **JUDGMENT**

1. This appeal is preferred against the judgment and decree passed by the Subordinate Judge, Kottayam in O.S.138/96. The suit is one for declaration, recovery of possession and mandatory injunction. The trial court did not find in favour of the plaintiffs and therefore they have preferred the appeal. The brief facts

necessary for the disposal of the appeal are stated as follows. The plaint schedule property is a part of a larger extent of property and there was a division between the first plaintiff's father Varghese Thomas and his brothers and it was set apart to the share as per an oral partition and each one of them were in possession of respective shares. The plaintiff got the property from his father by virtue of a sale deed in 1971. The plaintiffs were in possession of the property out of which 72 cents had been given to strangers and kudikidappukars leaving behind 28 cents of property. It is these 28 cents of property which is the subject matter of the suit.

2. According to the plaintiff a Primary Health Centre is established on the premises of a surrender by the plaintiffs' predecessor. The plaintiffs nor his predecessors have surrendered any land in favour of the Government and therefore they do not have any right, title or possession over the property and therefore the suit is filed for declaration of title, recovery of possession and for a mandatory injunction.

3. On the other hand, defendants would contend that as early as in the year 1966 there has been a relinquishment of property in favour of the Government and from that date onwards the Government is in possession of the premises. The Panchayath has passed a resolution in the year 1968 to construct a Primary Health Centre and ultimately that dream project has come true by the end of 1992. Therefore it is submitted that the plaintiffs are not entitled to the relief prayed for.

4. In the trial court Exts.A1 to A9, B1 to B3, and X1, X1(b) were marked and PWs.1 to 3 and D1 to D3 were examined. On an analysis of the materials the Court had disallowed the claim of the plaintiffs.

5. The thrust of the argument by the learned counsel for the appellants is to the effect that when a property is relinquished in favour of the Government it should be under the [Kerala Land Relinquishment Act 1958](#) and it shall be through document. As no document is produced the case of a relinquishment does not stand established and as the plaintiff has obtained title under Ext.A1 he must be entitled to recovery of possession on the strength of his title. It is therefore necessary to refer to earlier litigations between the parties and non- parties.

6. Ext.B1 is a suit filed by the father of the plaintiff against 9 persons for damages on the ground from these 28 cents of property valuable trees had been cut and removed and therefore they are entitled to get damages. Though the Government was not a party to the proceedings the defence in the said case was that as early as in the 1966 there had been relinquishment of the property in favour of the Government and in pursuance of the same the Government had been in possession and the Panchayath authority had initiated steps to construct a Primary Health Centre and therefore the plaintiffs who are claiming to have right over the property under Ext.A1 doest not have any title to this property. After considering the materials and the evidence the Court below had dismissed that suit holding that the plaintiffs have not succeeded in proving their title and therefore they are not entitled to claim damages. The borne of contention between the plaintiffs and the defendants in that suit is the very same as it was between the plaintiffs and the Government in this suit. It is true that the principle of resjudicata may not apply because the Government is not a party to it. But the principle of absolute estoppel is writ large on this case because the plaintiffs have filed the suit for damages caused to the property on the strength of the title and in that case a competent Court of jurisdiction had found in favour of relinquishment in favour of the Government and held that the plaintiffs have no title to the property. Since the plaintiffs have permitted that judgment to become final by not pursuing the matter in appeal it is too late for them now to contend for the position that the said judgment is not binding on them.

7. I had meticulously scanned through the judgment Ext.B1 wherein it is clearly recited that as early as in the year 1986 the plaintiffs predecessors have filed a suit for recovery of possession wherein it is specifically stated that the possession is with the Government. The Court in that case in Ext.B1 also found that an oral partition set up between the children and the father had not been proved and therefore the father who had executed Ext.A1 in the year 1971 did not have absolute right over the property and on that basis also Ext.A1 will not confer any title on the plaintiffs. That has also become final.

8. Now it has to be mentioned that it is a definite case of the Government that they are in possession of the premises from 1966 onwards. It has also to be stated that

in Ext.B1, DW3 who was the then Panchayath President, was examined as a witness. He was a local M.L.A., later a Deputy Speaker and for some time a Minister as well. The trial court analysed his evidence and found in favour of the relinquishment set up by the Government. One other document which may throw absolute light on this is Ext.B2. It is an assignment deed executed in favour of Kuttayi by the father of the first plaintiff. That document will show that northern boundary to the property so assigned is "Health Centre..... .."

This document is dated 21.12.73. The father who had sold the property to the son who is claiming right under Ext.A1 in 1973 had made explicitly clear that land had been given to the Government for the purpose of the Health Centre. Now it is not an act of trespass as alleged by the plaintiffs in this case. In the year 1968 the Panchayath passes a resolution thereby deciding to construct a Primary Health Centre in this property. So the case of relinquishment set up by the Government in 1966 is valid followed by a decision of the Panchayath in the year 1968 and there is an admission by the plaintiffs' family regarding Governmental possession in the year 1973 and also in the suit in 1986 wherein it is stated that the property is in possession of the Government. The Secretary of the Panchayath had stated before the Court that documents are not kept permanently and only registered documents are preserved and others are destroyed after 12 years. One cannot hold that it is a impossibility or that it cannot be accepted. So just because we are not able to find out that document being produced in the Court, the Court cannot jump to a conclusion especially in the light of the staring judgment in Ext.B1, a candid admission in Ext.B2 and also in the suit of the year 1986 regarding the Governmental possession of the property.

9. Therefore I have no hesitation to hold that the plaintiffs have failed to prove their title to the property and therefore they are not entitled to the declaratory relief or the relief of recovery of possession or mandatory injunction as prayed for and therefore the judgment and decree of the trial court are confirmed and the appeal is dismissed but without costs.