

IN THE HIGH COURT OF THE STATE OF TRAVANCORE-COCHIN AT ERNAKULAM.

Present:-

*The Hon'ble Shri K.T. Koshi, Chief Justice
and
The Hon'ble Shri G. Kumara Pillai, Judge.

A.S. No. 16 of 1955.

Against the decree in Original Suit No. 115 of 1950 of the
Anjikalimal District Court.

Plaintiff:- Plaintiff.

Thandama, wife of Mukkath Augusty and daughter of Panasery
Pali, Arur Muri, Arur Proverthy, Shertalai Taluk.

By Advocate Shri A.S. Krishna Iyer.

Respondents:- Defendants.

1. Ponveli Joseph son of Antha, Kumbalangi Muri, Kumbalangi
Village, Cochin-Kanayannur Taluk.

2. Peter, son of 1st respondent do. do. do.

By Advocate Shri K. Rama Iyer.

This Appeal Suit having been finally heard on 4-6-1956, this
court on 8-6-1956 delivered the following:-

JUDGMENT.

This is a plaintiff's appeal directed against the judgment and
decree in O.S. 115 of 1950 on the file of the District Court of Anji-
kalimal refusing to set aside an order for re-delivery of the plaint
schedule property to defendant 1 in the suit. The plaintiff as also
defendant 1 claimed to have obtained the right to possession pursuant
to sale certificates granted by the court, the plaintiff claiming
under the certificate issued in O.S.No. 102 of 1107 on the file of
the lower court and defendant 1 under the certificate granted in O.S.
No. 384 of 1101 on the file of the Cochin District Munsiff's Court.
Defendant 1 when dispossessed by the plaintiff pursuant to the sale
certificate in her favour applied for re-delivery and that was allowed.
The plaintiff therefore brought the suit giving rise to this appeal to
set aside the order for re-delivery, but that suit was unsuccessful.
Hence the appeal.

The appeal came up before us for final hearing on 4-6-1956 and
we heard the appellant's learned counsel almost completely and the
learned counsel for the respondent in part. We found that an adjudi-
cation on strict merits will result in great hardship to one side or

the other. At the same time both sides had their strong points. A suggestion from the Bench to have the matter decided in such a way as to avoid hardship to either side was welcomed by both sides and with their tacit assent we thought that if the plaintiff is allowed to redeem the property on payment of Rs. 1,500/- to defendant 2 (son of defendant 1) within a period of six months, that would be proper adjustment of the rights and equities of the parties. Either side had not much to say against it and we therefore proceed to pass a decree accordingly.

Within six months from this date the plaintiff will pay defendant 2 Rs. 1,500/- and obtain re-delivery of the property ^{from} for him. If the plaintiff fails to discharge the burden thus thrown on her the suit will stand dismissed with costs, but if the deposit is made within the period specified the plaintiff will be given delivery of the property with all the improvements thereon. The amount fixed is in lieu of the mortgage money, value of improvements, etc., due to defendant 2 and it is in addition to the amount paid into the court by the plaintiff towards mesne profits and withdrawn by defendant 2. Either side will not have any further claim against the other in respect of the plaint schedule property.

The appeal will stand disposed of as above and a decree on the above lines will follow.

Order accordingly.

Sd/- K.T. Koshi, C.J.,

Sd/- G. Kumara Pillai, J.

8th June, 1956.

Compared by
W. Acharya

(True Copy).

W. Acharya
Dy. Registrar,
for Registrar.

AR/-5-7-56.

A.S. No. 16 of 1955.

Copy of Judgment.

A. 1064/55. Adv. Shri. A. S. Krishna Rao

9.8.56