

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Present:

The Honourable Mr. Justice Varghese Kalliat

Wednesday, the 5th February, 1985/ 17th Masha, 1906.

Second Appeal No: 2 of 1980

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(Against the decree and judgment of the court of the District Judge of Palghat in A.S.No.126 of 1978 dt. 18-10-1979 (O.S.No.114 of 1972 Court of the Munsiff of Alathur dt.30-3-1978).

APPELLANTS - Appellants - Defendants.

1. Krishnan, s/o Chathukutty, Thakkumpuram,
Thakkethara Village, Alathur Taluk.
2. Makkandi, S/o Chathukutty, aged 48 years, do. do.
3. Velayuthan, S/o Chathukutty, do. do.

By Advs. M/s. P.N.Krishnakutty Achan, K.Vijayan,
N.N.Sugunapalan & P.N .Raveendran.

RESPONDENT - Respondent - Plaintiff.

Yasoda Anna alias Thimma Anna, D/o Janaki Anna,
residing at Karanalayam, Perayankode, Chittur Village,
Chittur Taluk, Palghat District.

By Advs. M/s. P.R.Govinda Marriyar, Sebastian
Davis, H.Sivaraman & K.Usha.

This Second Appeal having been finally heard on

31-1-1985, the court on 6-2-1985 delivered the following:-

Varghese Kallista, J.

S.A. No.2 of 1980

Judgment

This is an appeal by the defendants. Plaintiff filed a suit for perpetual injunction to restrain the defendants from trespassing into the plaint schedule property.

Defendants contended that they are in possession of the property and that they are the cultivating tenants of the property. The trial court initially dismissed the suit.

The plaintiff filed an appeal, A.S.No.3 of 1976. The appellate court remanded the case for fresh disposal with a direction to refer the question of tenancy to the concerned Land Tribunal. After remand, the trial court referred the matter to the Land Tribunal for the decision on the question of tenancy. The Land Tribunal returned a finding that the defendants are not tenants of the suit property. Since the direction of the appellate court was to decide the suit on the finding regarding tenancy, the trial court decreed the suit.

2. The defendants filed an appeal before the District Court, Palghat. The appellate court considered the question of possession also independently in the sense that the appellate court did not rely solely on the finding recorded by the Tribunal to decide the question of possession, it also appreciated the evidence adduced by the plaintiff. After appreciating the evidence, the appellate court held that the plaintiff has proved possession of the property on the date of suit. After recording such a finding, the appellate court confirmed the judgment and decree of the trial court. Now the defendants appeal to this court.

3. Counsel for the appellants submits that in a suit for injunction, the question regarding title is not of much importance as ^{has been} held by this court in Kesava Bhat v. Subraya Bhat (1979 K.L.R. 766 P.B.) It is true that the question of title is not a matter always to be decided in a suit for injunction. But, in this case, the trial court cannot be accused of considering the question of title since the appellate court directed the trial court, in its remand order to consider that question. The trial court is not bound by the directions given by the appellate court.

In a suit for injunction the defendants can rest content that the plaintiff is not in possession of the property. He can also contend if he so chooses, that he is in possession of the property pursuant to a particular title. He can very well say that he is a tenant of the plaintiff and that he is in possession of the property. When once the defendant contends that he is in possession of the property by virtue of his tenancy, I am of opinion that in such a case if the court considers the question of tenancy also for the purpose of determining the crucial question of possession, it cannot be said that what the court does is wrong. In this case, the trial court was directed by the appellate court to consider the question of tenancy. So it cannot be contended that the trial court has committed an error. As stated earlier, the appellate court has ~~also~~ considered the question of possession independently. Now, both the courts have found that the plaintiff is entitled to a decree for injunction. The counsel submitted that I should remand the case for a fresh consideration by the trial court. This is a simple suit for injunction which was instituted in 1972. I think I cannot ~~assent~~ ^{succede} to the request of the counsel. I see no merit in the appeal. It is dismissed. No order as to costs.

6/12 February 1981

Sd/- Vardaan Kallath - Judge

Verdict
L.A. 5/15/81
2/13

True copy.

from
Nandakumar
19/2/81