

IN THE HIGH COURT OF KERALA AT ERNAKULAM.

Present:

The Hon'ble Mr. Justice Varghese Kalliath.

Friday

~~Monday~~ the 25th day of January 1985 / 5th Magha, 1906.

S.A. No. 4 of 1980-8

A.S. No. 4 of 1974 of the Subordinate Judge's Court, Manjeri.

O.S. No. 831 of 1968 of the Court of the Munsiff of Manjeri.

Appellant/Appellant/3rd defendant:

Poonkudil Marayanamangalath Illath Neelakantan Namboodiri's son Thavazhi Karanavan and Manager, Cheriya Vasudevan Namboodiri, residing at Mankada Pallipram Amson, Vellikkaapatta Desom, Serunthalanna Taluk, Malapuram Dist.

by Advs. M/s. V.R. Venkitakrishnan and K.N. Sudhakaran Pillai.

Respondents/Respondents/Plaintiff & 1st Defendant:-

1. Kuttasseri Thazhathae Veettil Thavazhi Karanavan Madhavan Nair, Manjeri Amson, Arikizhayi Desom, Ernad Taluk, Malapuram District.
2. Tharanammil Karanayil Ayamaed's Son Kammummi, residing at do. amson, do. Desom, do. Taluk, do. District.

By Advs. M/s. P.K. Balasubramanian, G.K. Usha and K.S. Rama Varrier.

This Second Appeal having been finally heard on 25.1.1985, the court on the same day delivered the following:-

Varghese Kallianth, J.

S.A. No. 4 of 1980 - B

J U D G M E N T

This is an appeal by the 3rd defendant. The 2nd defendant died pending suit and the 3rd defendant is the legal representative of the 2nd defendant. Initially, the suit was filed for an injunction. Thereafter the plaint was amended and the suit was converted into a suit for recovery of possession of the plaint schedule property. The 2nd defendant contended that he was the owner of the plaint schedule property. He contended that he had title to and possession over the plaint schedule property. The third defendant adopted the contentions of the 2nd defendant. The plaintiff also claims title and said that he lost possession when the defendants trespassed into the property. The trial court considered the evidence in the case particularly in regard to the title of the plaint schedule property and found that the plaintiff failed to prove his title and dismissed the suit.

2. The defeated plaintiff filed an appeal before the appellate court. The appellate court reversed the judgment

and decree of the trial court and decreed the suit. The only question to be decided in the case is whether the finding of the appellate court that the plaintiff has established his title is correct or not. Now I shall deal in brief the rival claims of title to the property by the plaintiff and the defendants. According to the plaintiff the property belongs to one Kaithakkal Mana. In 1947 there was a partition in the family of Mana, the partition is evidenced by Ext. A-1 in this case. Plaintiff property was allotted to Madhavan Namboodiri under Ext. A-1. Madhavan Namboodiri after obtaining the property under Ext. A-1 assigned the same in favour of Lakshmi Amma. The document of assignment is evidenced in the case as Ext. A-2. There was a partition in the Teyssali of Lakshmi Amma evidenced by Ext. A-3 dated 16.7.1951, and in this partition the property was allotted to the plaintiff's branch. This is the case of the plaintiff in regard to his title.

3. The 2nd defendant contended that the property belonged to Poonkudil Illos who executed a possessory mortgage in favour of Kaladi Mana. Copy of the mortgage is Ext. B-9. Ext. B-9 is dated 29.11.1936. In a partition in the Poonkudil family in 1937 evidenced in the case as Ext. B-10, the second

defendant obtained the equity of redemption over the property. The 2nd defendant's lawyer instituted a suit O.S. 463 of 1954, for redemption of the mortgage Ext. B-9. B-7 is the judgment in that suit. B-5 is the decree. B-6 is the Amin's account. There was a plan prepared by the Commissioner appointed in the suit. It is marked as Ext. B-8. The defendants have also marked the report of the Commissioner in that case as Ext. B-13. Pursuant to the delivery in O.S. 463 of 1954, they came into physical possession of this property.

4. The important question that has to be decided in the case is whether the plaintiff has proved title to the plaint schedule property. In regard to proof of title also, the court has to consider the preponderance of probabilities to see where does the title rest. The appellate court has done a very good job in examining in depth the question of title to the property. It has come to a correct conclusion that the plaintiff has established his title. Ext. A-1-as stated earlier is a partition in the family of Kaitakkal Illam. The suit property is included in that partition deed. The name and other description of the suit property tally with the name and other descriptions given in Ext. A-1. The plaint schedule property is item No.48 in C schedule.

It is seen that the property ^{has been} dealt with by the allottee in 1961. The allottee has sold the property to Lakshai. Again we see that the property ^{has been} dealt with by Lakshai's family in Ext. 3-3 partition. In that partition this property has been given to the plaintiff's branch. The plaintiff has produced Exts. A-4 to A-12 tax receipts showing that Lakshai's family has paid the tax. Exts. A-13 to A-15 are extracts of settlement register of Nanjeri manon; extract of resurvey resettlement register of Nanjeri manon and settlement register of ~~Arakki~~ Arukishaya desom respectively. True that Patta alone will not confer title, but these registers would show that the property was treated as the property of the persons named in those registers. It has got great probative value in assessing the title of the property. According to the extracts of these registers are very credible documents for determining the title of the property. The counsel for the appellant submitted that the previous redemption decree will show conclusively that the defendant had title to this property. I cannot agree with him. He refers me to the judgment and decree and other proceedings in O.S. 405 of 1954. I have to remember that this O.S. 405 of 1954 was a suit for redemption of a mortgage. In considering the probative value of the

documents relating to the execution proceedings the first and foremost thing that has to be looked into is the suit document in O.S. 463 of 1954. The appellate court has taken great pain to consider in depth the value of these documents. ~~xxxx~~ He has examined Ext. 2-9 the suit document and found that Ext. 2-9 will not take in the ^{in this suit} ~~suit~~ property. This finding of course is seriously challenged by the counsel for the appellant. In law he cannot challenge this finding. Since this is a finding of fact. but I have also examined the correctness of the finding. I have no hesitation to hold that the finding recorded by the appellate court on this issue is perfectly correct. Now it is established that the plaintiff has got title to the suit property and so he has got the right to recover the property. There is no case for the defendants that they have perfected title by adverse possession. The appellate court has decreed the suit. I find no error in that decree. The appeal is only to be dismissed. I do so. In the circumstances, no order as to costs.

20th January 1955.

Sd/- Varghese Kalliyath, Judge.

// True Copy //

K. Varghese Kalliyath
Asst. Registrar.

E. J. J. J.
1/6/55