

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE N.ANIL KUMAR

MONDAY, THE 6TH DAY OF SEPTEMBER, 2021 / 15TH BHADRA, 1943

RSA NO. 418 OF 2019

[Against the judgment and decree dated 22.2.2019 in A.S.No.58/2016 of the Sub Court, Payyannur arising from the judgment and decree dated 30.09.2016 in O.S.No.33/ 2012 of the Munsiff's Court, Taliparamba]

APPELLANT/APPELLANT/DEFENDANT:

DAVIS RAPHEL,
AGED 49 YEARS,
S/O.RAPHEL, PARAPPURATH HOUSE, PINKY VILLA,
TRICHAMBARAM, TALIPARAMBA AMSOM,
TRICHAMBARAM DESOM, TALIPARAMBA TALUK,
KANNUR - 670 141.
BY ADV. SRI.BLAZE.K.JOSE.
BY ADV SMT.DEEPA NARAYANAN

RESPONDENT/RESPONDENT/PLAINTIFF:

HENDRY THOMAS,
AGED 69 YEARS,
S/O.JOHN ANDROOS, TRICHAMBARAM, PINKY VILLA,
TALIPARAMBA AMSOM, TRICHAMBARAM DESOM,
TALIPARAMBA TALUK, KANNUR - 670 141.
BY ADVS.
SRI.V.A.SATHEESH
SRI.V.T.MADHAVANUNNI

THIS REGULAR SECOND APPEAL HAVING COME UP FOR
ADMISSION ON 02.09.2021, THE COURT ON 06.09.2021
DELIVERED THE FOLLOWING:

J U D G M E N T

'C.R.'

This Regular Second Appeal has been filed by the defendant in the civil suit challenging the judgment and decree dated 22.2.2019 in A.S.No.58/2016 of the Sub Court, Payyannur (hereinafter referred to as 'the first appellate court') by which judgment, the first appeal of the defendant was dismissed by the first appellate court confirming the judgment and decree dated 30.09.2016 in O.S.No.33/2012 of the Munsiff's Court, Taliparamba (hereinafter referred to as 'the trial court').

2. For brevity, the parties shall be referred to as referred in the original suit. Brief facts of the case giving rise to this appeal are as follows:-

The plaintiff Sri.Hendry Thomas, aged 69 years, who is the respondent in this appeal, filed the original suit before the trial court claiming for permanent injunction interdicting the defendant from trespassing into the plaint

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schedule property or interfering with the plaintiff's peaceful possession and enjoyment of the plaint schedule property and the house therein or committing any waste therein. The suit property measuring an area of 5 cents of land comprised in Re-Sy.No.21/5 of Taliparamba amsom, Thrichambaram desom, belongs to the plaintiff by virtue of a gift deed No.4034/1981 by Rev.Fr.James Nasrath for and on behalf of St.Paul's Church, Thrichambaram.

3. The plaintiff claimed to have obtained the property by virtue of the gift deed stated above. According to him, he has constructed a concrete house spending his own funds and he is residing therein with his family.

4. The defendant is none other than the son-in-law of the plaintiff and he has no manner of right over the property. The main complaint of the plaintiff is that the defendant is disturbing the plaintiff's peaceful possession and enjoyment over the suit property. Hence the suit was filed.

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5. The defendant filed a written statement refuting the claim of the plaintiff. The defendant admitted that the plaintiff obtained the property by virtue of the gift deed cited supra. According to him, the title of the suit property itself is questionable as the alleged gift deed was executed by the church authorities for the family. He would contend that he has married the only daughter of the plaintiff and has been practically adopted as a member of the family subsequent to the marriage. Hence, he maintained that he has a right to reside in the house, as of right. He further contended that he has constructed a building in the property expending his own money and he has no other place of abode. He further contended that the plaintiff's wife Molly filed M.C.No.14/2012 against the defendant for a protection order, which was settled between the parties, agreeing to reside together in the plaintiff's schedule building.

6. The plaintiff's wife had been examined as PW1.

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The defendant and two witnesses were examined as DWs.1 to 3. The plaintiff marked Exts.A1 to A9 series and the defendant marked Exts.B1 to B8 series.

7. The trial court held that the plaintiff is the owner in possession of the plaint schedule property and the defendant, who is the son-in-law of the plaintiff, has no manner of right in interfering with the possession of the plaint schedule building. The trial court further held that the awards passed in M.C.Nos.14/2012 and 19/2012 do not create any interest in the property or the house therein, which absolutely belong to the plaintiff. Accordingly, the suit was decreed.

8. The defendant filed an appeal before the first appellate court. The first appellate court also came to the conclusion that the defendant has no manner of right to disturb the peaceful possession of the plaintiff over the plaint schedule building. The appeal was dismissed, accordingly.

9. Heard Sri.Blaze.K.Jose, the learned counsel for the appellant and Sri.V.T.Madhavan Unni, the learned

counsel for the respondent.

10. Learned counsel for the appellant submits that both the courts below erred in decreeing the suit for prohibitory injunction from trespassing into the plaint schedule property in which the defendant also resides. The learned counsel further submits that the suit for injunction simpliciter is not maintainable as the defendant has been residing in the suit property on the date of suit. It is further contended that the defendant has a right to reside in the building as a member of the family and the plaintiff has no manner of right to obstruct the same.

11. Sri.V.T.Madhavan Unni, the learned counsel appearing for the respondent refuting the submission of the learned counsel for the appellant contends that the plaintiff has successfully proved his possession over the building, which is also practically admitted by the defendant in his written statement. It is further contended that the defendant

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is not a co-owner of the property and as such, he has no right to continue his residence in the plaint schedule property to the detriment of the true owner. Thus, it is submitted that the suit was decreed rightly by the two courts below.

12. This court has considered the rival submissions of the learned counsel for the appellant and the respondent.

13. This second appeal was instituted on 9.4.2019. When the case came up for admission on 10.4.2019, this Court issued notice on admission to the respondent by speed post. An interim stay was also granted for two months. Thereafter, the stay was not extended. The sole respondent entered appearance. On 6.8.2019, this Court passed an order referring the parties to mediation to be conducted by the Mediation Centre attached to this Court, having taken into consideration the fact that the parties are close relatives. The parties appeared before the Mediator. The case was mediated on 22.8.2019, 3.10.2019, 10.10.2019,17.10.2019,30.1.2020 and

13.2.2020. However, the matter was not settled. The report of the Mediator in the matter along with the enclosures were furnished before this Court.

14. Does a son-in-law have any legal right in his father-in-law's property and building? Admittedly, the plaint schedule property was gifted in favour of the plaintiff by the church authorities by virtue of Ext.A1 Gift Deed. The plaintiff is paying tax to the property by virtue of Ext.A2. He is also paying tax to the building. Exts.A3 to A9 would show that he has been residing in the plaint schedule building. It is difficult to hold that the defendant is a member of the family. The family of the plaintiff consists of his wife and daughter. The plaintiff has not filed any suit against his own daughter. However, he does not want the defendant to stay along with him. The plaintiff 's wife filed M.C.No.14/2012 against the defendant for a protection order and at the instigation of the defendant, the daughter of the plaintiff filed another

M.C.No.19/2012 against the plaintiff. Later, by Exts.B2 and B4 awards, the cases were settled by way of compromise in order to maintain harmony among the members of the family. The settlement in the said cases would not enure any benefit to the defendant.

15. Since the behaviour of the defendant became intolerable, the plaintiff filed a suit seeking a permanent prohibitory injunction restraining the defendant from entering into the plaint schedule property and building. This was resisted by the defendant pointing out the fact that he had constructed the building after availing a loan. He had also produced certain receipts allegedly issued in his favour by Taliparamba Service Co-operative Bank to show that housing loan was cleared by him. Exts.B5(a) to B5(h) receipts would show that the Thaliparamba Service Co-operative Bank issued receipts in the name of the plaintiff. Merely because the defendant remitted the amount, he could not claim any independent right over the building to the detriment of the true owner.

16. In the present case, the possession of the plaintiff was upheld by the two courts below concurrently. The defendant cannot even make a plea to be in possession of the suit property, as of right. It is a settled principle of law that even a trespasser, who is in established possession of the property, could obtain an injunction. However, the matter would be different if the plaintiff himself is the true owner of the property. The defendant is the son-in-law of the plaintiff. It is rather shameful for him to plead that he had been adopted as a member of the family, subsequent to the marriage with the plaintiff's daughter.

17. In **Nair Service Society Ltd.** v. **K.C.Alexander and others** [AIR 1968 SC 1165], where a Three Judge Bench of the Supreme Court has reiterated the principle that possession is good against all but the true owner. In view of the dictum laid down in the aforesaid decision, a person in possession of the land in the assumed

character of owner and exercising peaceably the ordinary rights of ownership has a perfectly good title against all the world but the rightful owner. The rightful owner filed a suit for injunction restraining him from entering into the property. The residence of the defendant, if any, in the plaint schedule building is only permissive in nature. The defendant cannot contend that he is in legal possession of the suit property or the building. As noted above, both the courts below have given cogent reasons for holding that the suit filed by the plaintiff for injunction was maintainable without seeking further relief.

18. The submission of the learned counsel for the appellant that the evidence adduced by the defendant had not been looked into is not factually correct. The trial court as well as the first appellate court have analysed not only the oral evidence but the exhibits, which had been filed on behalf of the defendant, which are clearly evident from paragraphs 16 and

22 to 24 of the first appellate court judgment. This Court is of the view that it is not necessary to decide the validity of Ext.A1 Gift Deed executed by the church in favour of the plaintiff. The suit for injunction filed by the plaintiff deserves to be considered on the strength of established possession of the plaintiff over the suit property and the building therein.

19. Learned counsel for the appellant contends that the plaintiff is a man of bad character and he is not on good terms with the members of his family. Section 52 of the Indian Evidence Act provides that in civil cases, a fact pertaining to the character of an individual is not relevant. It lays down the principle that the character of a party as a piece of evidence cannot be used to manifest that conduct attributed to him is not probable or improbable. The reasons behind the irrelevance are that a civil case has to be decided based on the matter in issue between the parties and not based on the present or past character of the parties.

20. On behalf of the respondent, it has strenuously been contended with considerable force that there was no question of law involved in this appeal much less any substantial question of law to warrant interference in second appeal. Concurrent findings are sought to be set aside in second appeal. To be a question of law involved in the case, there must be first, a foundation for it laid in the pleadings, and the question should emerge from the sustainable findings of fact, arrived at by Courts of facts, and it must be necessary to decide that question of law for a just and proper decision of the case. A concurrent finding of fact that the plaintiff has been in possession of the suit property on the date of suit is not open to challenge in the second appeal even if appreciation of evidence is wrong and the finding of fact is incorrect. Hence, this Second Appeal is liable to be dismissed.

For the above said reasons, this Court does not find any error in the judgment of the first appellate court

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confirming the judgment and decree of the trial court by decreeing the suit for injunction simpliciter. Thus, this RSA is dismissed with costs. Pending applications, if any, stand closed.

Sd/-

(N.ANIL KUMAR)
JUDGE

MBS/