2025:KER:28564

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE M.A.ABDUL HAKHIM

FRIDAY, THE 4TH DAY OF APRIL 2025 / 14TH CHAITHRA, 1947

RSA NO. 760 OF 2011

AGAINST THE JUDGMENT AND DECREE DATED 29.01.2011 IN AS NO.154 OF 2008 OF III ADDITIONAL DISTRICT COURT, KOLLAM ARISING OUT OF THE JUDGMENT AND DECREE DATED 31.03.2008 IN OS NO.47 OF 2004 OF PRINCIPAL MUNSIFF COURT, KOLLAM

APPELLANTS/APPELLANTS/ PLAINTIFFS 1,2,4, 5 AND 7 TO 12:

1 RAMACHANDRAN PILLAI,
S/O.JANARDHANAN PILLAI, KADAPPAL VEEDU, PATTATHANAM CHERRY, KOLLAM.

2 MAHESWARI AMMA,
D/O.THANKAMMA AMMA, -DO- -DO-

3 SUBHADRA AMMA,
D/O.THANKAMMA AMMA, -DO- -DO-

4 VIJAYALEKSHMI AMMA,
D/O.THANKAMMA AMMA, -DO- -DO-

5 SREEDHARI,
D/O.THANKAMMA AMMA, -DO- -DO-

6 MAHESWARAN,
S/O.JANARDHANAN PILLAI, -DO- -DO-

7 SUDARSANAN PILLAI,
S/O.JANARDHANAN PILLAI, -DO- -DO-

8 RAJESWARI AMMA,
D/O.THANKAMMA AMMA, -DO- -DO-

9 RRAJASEKHARAN PILLAI,
S/O.JANARDHANAN PILLAI, -DO- -DO-

BY ADVS.
SUMATHY DANDAPANI (SR.)
MILLU DANDAPANI

RESPONDENTS/RESPONDENTS/DEFENDANTS 1 TO 4 AND PLAINTIFFS 3 & 6:

1 KERALA STATE,
REPRESENTED BY THE DISTRICT COLLECTOR, KOLLAM- 691 001.

2 TAHSILDAR,
TALUK OFFICE, KOLLAM-691 01.

3 VILLAGE OFFICER,
VADAKKEVILA VILLAGE, VADAKKEVILA (PO), KOLLAM-691 010.

4 JAYAKUMAR,
S/O.KUTTAN PILLAI, JAYA JYOTHI, VETTILATHAZHIKATHU CHERRY,
THRIKKOVILVATTOM VILLAGE-691 001.

5 INDIRA AMMA,
D/O.THANKAMMA AMMA, SUPRIYA , PURA 129, POOJAPPURA PO,
TRIVANDRUM-695 012.

6 SANKARAKUMAR,
S/O.JANARDHANAN PILLAI, GURU MAHIMA, AYATHIL NAGAR-3,
AYATHIL PO, KOLLAM- 691 017.

BY ADVS.
R1 TO R3 BY GOVERNMENT PLEADER SRI DENNY DEVASSY
ALEX N.MATHEW (KOLLAM)
R4 BY ADV. JAMES JOSE
R6 BY PRATHEESH.P
H.RAMANAN

THIS REGULAR SECOND APPEAL HAVING BEEN FINALLY HEARD ON 04.04.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

1. Appellants are the plaintiff Nos 2, 4, 5 and 7 to 12 in the suit. Plaintiffs 2 to 12 are the children of the 1st plaintiff. The defendants 1 to 3 are State of Kerala Represented by District Collector, Tahsildar and Village Officer. The 4th defendant is a person having property on the southern side of the plaintiff's property. The suit was for declaration of title and possession of plaint B schedule property and for a consequential permanent prohibitory injunction against initiating action against the same.

2. Plaint A schedule property is having an extent of 60 cents equivalent to 24 Ares and excess situated in Survey No. 412 of Vadakkevila Village. It is situated on the eastern side of Ammanada-Chirayilkulam road. Plaint B schedule property is 2 Ares of land equivalent to 4.94 cents lying in a triangle shape inside the plaint A schedule property at its south west corner, which is mistakenly included in Re Sy. No.28/17.

3. Plaintiff instituted the suit when the 2nd defendant issued Exts.B3 & B4 Notices dated 13.11.2003 under the Kerala Land Conservancy Act, against the plaintiff and the 4th defendant alleging that they have encroached into Puramboke land situated in Re.Sy. 28/17 of Vadakkevila village. It is alleged in those Notices that the total extent of puramboke land is 5.60 ares in Re-Sy.No.28/17. As per Ext.B3, the plaintiff is alleged to have encroached into 1.50 Ares. As per Ext.B4, the 4th defendant is alleged to have encroached into 0.50 ares.

4. The case of the plaintiffs in substance is that large extent of properties including the plaint A schedule property belonged to Thekkekadappal branch of Kadappal Tharavad. O.S No.1134/1115 was instituted for partition before the Munsiff's Court Kollam. Mother of the 1st plaintiff Narayani Amma was the 3rd defendant in that suit. The subject matter in the said suit was compromised by executing a Partition deed No.8018/1119 M.E,

and thereupon, O.S No.1134/1115 M.E was withdrawn, and the Court dismissed the suit as withdrawn. Thereafter, another suit was filed before the Munsiff's Court Kollam as O.S No.24/1120 M.E challenging the Partition Deed No. 8018/1119 M.E and for partition. In O.S No.24/1120, the Trial Court passed a Preliminary Decree ordering partition after setting aside Partition Deed No.8018/1119 M.E. Final decree was passed on 29.11.1997 on the application of the plaintiffs 1 to 9 in the present suit. The property allotted to the share of the plaintiffs 1 to 9 was plaint A schedule item No.3 property which is the plaint A schedule property in the present suit. The plaintiffs 1 to 9 got delivery of the plaint A schedule property on 26.09.2003 as per Ext.A6 Delivery Kaichit. The plaintiff put a fence on the western boundary of plaint A schedule property. Since the 4th defendant who is having property on the southern side of plaint A schedule property did not have access to his property from the eastern road, the plaintiffs

and 4th defendant entered into a license agreement with respect to 1 cent lying on the southern extremity of the plaint A schedule property for a period of six months. A Pongu tree which is otherwise called as 'Kambakam' having an age of 50 years old was standing at the south western portion of plaint A schedule property. A banyan tree also began to sprout there. In the year 2003, the plaintiffs cut down the banyan tree. At the instance of certain people, the 3rd defendant Village Officer issued Exts.B3 and B4 L C Notices Nos.10 and 11 of 2003 under the Kerala Land Conservancy Act alleging that the said tree is situated in the puramboke land. The properties covered by Exts.B3 and B4 L C Notices are part and parcel of plaint A schedule property which is the B schedule property in the suit. The plaintiff also claimed that even if the 1st defendant is having right over plaint B schedule property the same has been lost by adverse possession and hence the defendants 2 and 3 are not entitled to take action under

the Kerala Land Conservancy Act.

5. The 2nd defendant filed a Written Statement and an additional written statement contending, *inter alia*, that the land being used as a passage to the registered land of the plaintiff is a part of an old puramboke comprised in Re.Sy. No.28/17 of Block No.24 of Vadakkevila village. Land conservancy proceedings were initiated since an encroachment was found having an extent of 1.50 Ares of road puramboke in Re.Sy.No.28/17 of Block No.24 of Vadakkevila village. The agreement between the plaintiff and the 4th defendant with respect to road puramboke land is not valid. The way described in the plaint is a road puramboke comprised in Re-Sy No.28/17, which was situated in old Survey No. 416, and the same is shown as road puramboke in the BTR. On the eastern side of the road, there was a Kambakam tree having an age of 50 years old worth Rs.10,000/-. Adjacent to the said tree there was a banyan tree 10 years old. Plaintiffs 2, 6, 9, and 10 cut

and removed the said trees from the puramboke land, and hence, the land conservancy proceedings were initiated. The plaintiffs are not having any excess land. The plaintiffs put up fencing enclosing 1.50 Ares of puramboke land before one month. 5.60 Ares, lying on the western side of the registered holding, was encroached on by the plaintiffs and constructed fence cutting and removing trees stood therein. The plaintiffs are claiming title over pacca road from Ammanada to Chirayilkulam. The road puramboke is situated in Re-Sy.No.28/17 whereas the property of the plaintiffs and 4th defendants are in Re-Sy No.29/10. Plaintiffs have no right to claim adverse possession over puramboke land. The suit is filed only to defeat land conservancy proceedings initiated against the plaintiff.

6. The defendants 1 and 3 filed Memo adopting the contention of the 2nd defendant.

7. The 4th defendant filed a Written Statement contending that the

suit is bad for the misjoinder of parties as the 4th defendant is not a necessary party to the suit. No relief is sought against the 4th defendant. The 4th defendant is in possession and enjoyment of 5.26 Ares in resurvey No. 29/37, 22,13 and 26 of Vadakkevila Village. The plaint A schedule property is situated on the north of the property of the 4th defendant. Panchayat Road is situated on the western side. The 4th defendant is using about 1 cent of land to enter into his property. The said 1 cent is a part and parcel of the 4th defendant's property. An agreement for sale was executed by the 4th defendant with the plaintiffs and the plaintiffs received Rs.10,000/- as advance. B schedule property exclusively belonged to the 4th defendant. There is no other way to enter into his property.

8. The plaintiffs filed a Replication contending that the road on the western side of plaint A schedule property was only a beaten track. Now it is having a width of 3.5 meters and length of 29.5

meters and the same is comprised in Sy.No.28/17. An extent of 2.5 cents is lying as excess property of the plaintiffs. Old Sy.No.416 is not a road puramboke. The said property is Kavu Puramboke, belonged to the Pattur family. The extent of property as per revenue records in Old Sy.No.412 is 58 cents. An extent of 5 cents excess land lying in old Sy. No.412 was falsely incorporated as road puramboke in the Resurvey Plan. Out of the said 5 cents of excess land, 2.5 cents converted as road, and the balance is in the possession and enjoyment of the plaintiffs over which the Government does not have any right.

9. On the side of the plaintiffs, the 10th plaintiff was examined as PW1, one witness was examined as PW2, and the Advocate Commissioner who prepared the Ext.C1 Report was examined as PW3. On the side of the plaintiffs Exts.A1 to A23 were marked in evidence. On the side of the defendants 1 to 3, the 3rd defendant was examined as DW1. On the side of the defendants Exts.B1 to

B7 were marked. Commission Report, Mahazar and Plan were marked as Exts.C1 , C2 and C3.

10. The Trial Court dismissed the suit holding that plait B schedule property is not the part and parcel of plaint A schedule property; that plaintiff did not obtain or possess excess land other than 60 cents in old Sy.No.412 as per Ext.A6 Delivery Kaichit and that the suit is not maintainable under S.20A of the Kerala Land Conservancy Act.

11. The plaintiffs 1, 2,4,5 and 7 to 12 filed Appeal before the First Appellate Court and the First Appellate Court dismissed the appeal confirming the judgment and decree of the Trial Court. The First Appellate Court marked two documents in evidence from the side of the plaintiff as Exts.A24 and A25. The First Appellate Court found that the suit filed by the plaintiffs is maintainable as the same is not barred under S.20A of the Kerala Land Conservancy Act. The First Appellate Court also found that there is nothing on

record to prove that the plaintiffs had excess property than 60 cents of land in old Sy.No. 412 covered by Ext.A6 Delivery Kaichit.

12. This Court admitted the Regular Second Appeal on the following substantial questions of law.

i. Whether the courts below erred in holding that there is government puramboke land in between the road and plaint A schedule property on its eastern side ignoring the boundary descriptions as east to the way in Exts.A1, A1(a), A7, A8, A9 and A10 documents and in Ext.A6, delivery kaichit; and ignoring the settled position of law regarding conflict of boundary as against the extent, survey number etc., of land as reported in 1957 KLT 42, 1984 KLT SN 11 P 65 and 1990(1) KLT 187?

ii.Have not the courts below erred in not holding that by the resurvey proceedings the revenue authorities arbitrarily and illegally added portion of property corresponding to the property in old survey No.412 to resurvey subdivision No.28/17 which is corresponding to old survey No.416, by analyzing the documents

available on record and the provisions of the Kerala Survey and Boundaries Act and Rules?

iii.Have not the courts below erred in not holding that the plaintiffs have perfected their title to the plaint B schedule property by adverse possession and limitation even if it is assumed that plaint B schedule property is a Government puramboke land?

13. I heard the learned Senior Counsel for the appellants Smt.Sumathi Dandapani instructed by Adv.Sri.Millu Dandapani, learned Senior Government Pleader Sri.Denny Devassy for respondents 1 to 3 and the learned counsel for the 4th respondent Sri.Alex N Mathew.

14. The learned Senior Counsel for the appellant contended that Ext.A7, A8, A9 and A10 documents would reveal that there was excess land in plaint A schedule property which is described as “Vadavuvashi”. Exts.A3,A5 and A6 would prove that the plaintiffs got delivery of 60 cents of land in old Sy.No.412. The puramboke

is situated in old Sy.No.416. In resurvey, Re-Sy No.29/10 corresponds to old Sy.No.412 and Re-Sy No.28/17 corresponds to old Sy.No.416. This is revealed from Ext.B5 BTR. There was only 58 cents in old Sy.No.416 as puramboke. But in resurvey 63.25 cents is recorded as puramboke in Re- Sy.No.28/17 thus including 5.25 cents. It clearly shows that the said extent was taken from registered holding situated in old Sy.No.412. The plaintiffs executed Ext.A11 License Agreement with the 4th defendant for using 1 cent of land out of plaint B schedule property. Subsequently, the plaintiffs executed Ext.A12 Agreement agreeing to sell 1 cent of land to the 4th defendant for a sale consideration of Rs.80,000/-. The disputed trees were situated in the registered holding of the plaintiffs, and hence, the plaintiffs had every right to cut and remove them. Even though the plaintiff claimed B Schedule property having an extent of 4.94 cents, the claim was limited in the Replication to 1.14 Ares, which

is found in Sketch No.1 in Ext.C3 Plan. The evidence of the 3rd defendant as DW1 fully supports the case of the plaintiffs. The Trial Court as well as the First Appellate Court ought to have found Plaint B schedule property found as 1.14 Ares in Sketch No.1 as a part of plaint A schedule registered holding of the plaintiffs. The Courts did not consider Exts.C1 to C3 in the right perspective. The properties were in possession of the Receiver for more than 60 years prior to the possession of the plaintiffs. Hence defendants 1 to 3 were not possessing the plaint B schedule property at any point of time. The learned Senior counsel concluded that all the substantial questions of law are to be answered in favour of the appellants allowing the appeal setting aside the judgments and decrees passed by the Trial Court as well as the First Appellate Court and allowing the suit granting reliefs in favour of the plaintiffs with respect to plaint B schedule property as found in Sketch No.1 in Ext.C3 plan.

15. On the other hand the learned Government Pleader argued that the plaintiffs can not claim any area larger than the area covered by Ext.A6 Delivery Kaichit. The plaintiffs did not have a case that they have excess land. When the property was taken possession as per Ext.A6 Delivery Kaichit, reference to earlier documents for claiming excess can not be permitted. It is obvious from the facts that the plaintiffs filed the suit for the sole purpose of defeating the land conservancy proceedings validly initiated by the official defendants. The Trial Court as well as the First Appellate Court considered the matter in the right perspective and arrived at the correct conclusion. Learned Government Pleader concluded by submitting that the substantial questions of law formulated in the Appeal do not arise in the matter.

16. The Counsel for the 4th respondent argued that the 4th respondent/4th defendant was unnecessarily dragged into the suit by the plaintiffs. No reliefs are claimed against the 4th

defendant. Counsel pressed for dismissal of the appeal.

17. I have considered the rival contentions.

18. Plaintiffs' specific case is that plaint B schedule property is a part of their registered holding included in Plaint A schedule. Plaint A schedule property is shown having an extent of 60 cents equivalent to 24 Ares and excess situated in Survey No. 412 of Vadakkevila Village. Plaint B schedule property is shown having 2 Ares of land equivalent to 4.94 cents lying in a triangle shape inside the plaint A schedule property at its south west corner which is mistakenly included in Re.Sy.No.28/17.

19. Admittedly, Old Sy.No.412 is private property, and Sy.No.416 is puramboke. In Resurvey, Re.Sy.No.29/10 is private property and Re.Sy.No.28/17 is puramboke after assignments. The plaintiff claimed the extent of 2 Ares of land equivalent to 4.94 cents as Plaint B Schedule. It appears that such extent is included in Plaint B schedule since Exts.B3 and B4 Notices to the plaintiffs and the

4th defendant covers total extent of 2 ares. Plaintiffs themselves admit that it is included in Re-Sy.No.28/17. According to them, it is by mistake included as puramboke in Resurvey. Even though they did not amend the Plaint B schedule, the contention now advanced is that they limited their claim to 1.14 Ares which is found in Sketch No.1 in Ext.C3 Plan. It is not permissible to limit the plaint claim without necessary amendment in the plaint. The plaintiff could have amended the plaint schedule properties when Advocate Commissioner filed Exts.C1 to C3 Reports. Now the plaint schedule properties do not tally with the properties identified in Ext.C3 Plan.

20. In view of the contentions advanced before me, I find that Two questions arise for consideration. First is whether the plaintiffs had any excess land in their registered holding. Secondly, apart from puramboke in Old Sy.No.416, whether any private property in old Sy.412 is included in Re-Sy.No.28. If the answers to these two

questions are in the affirmative, the plaintiff is entitled succeed in the suit.

21. The plaintiffs claim excess possession of land in their registered holding by referring to the existence of ‘Vadavuvashi’ in the title documents. Learned Senior Counsel invited my attention to Exts.A7,A8, A9 and A10 in this context. The schedules of A7 and A10 documents shows existence of ‘Vadavuvashi’. But all these documents are executed during the pendency of O.S.No.24/1120 M.E. The property available for partition was partitioned in the final decree proceedings in O.S.No.24/1120 ME. The properties measured and allotted to the sharers. The plaintiffs obtained 60 cents of land in Old Sy.No.412 as per Ext.A6 Delivery Kaichit dated 26.09.2003. In Ext.A5, the Final Decree extent showed is 60 cents in Sy No.412, which is demarcated as Plot No.1 in Ext.C1 Plan therein. Ext.A20 herein is the Ext.C1 Plan therein. PW3 is the same Advocate Commissioner who prepared Ext.A4 Mahazar

and Ext.A20 Plan in O.S.No.24/1120 and Exts.C1 to C3 in the present suit. The Plot having 60 cents is specifically identified with side and diagonal measurements in Ext.A20. It would show that the property delivered as per Ext.A6 Delivery Kaichit is without any excess land. Sketch No.II in Ext. C3 Plan tallies with measurements in Ext.A20 on the basis of which the plaintiffs took delivery of the property as per Ext.A6. In Sketch No.II of Ext.C3 Plan, the extent is found as 60 cents as per the measurements in Ext.A20. The plaintiffs did not file any objection to Exts.C1 to C3. When property is allotted as per Final Decree, Final Decree is the title of the plaintiffs. They get the property only as per the Final Decree. Ext.A6 Delivery Kaichit issued in final decree proceedings in a Partition suit can not include excess land. As a matter of fact, Ext.A6 does not include any excess land.

22. A4 Mahazar prepared by PW3 shows the existence of a Pongu tree in Plaint A schedule item No.3 therein, which is the Plaint A

schedule property herein. In Ext.C1 Report, the Advocate Commissioner stated that he had reported 60 cents, including 'vadavuvashi' in his Report in O.S.No.24/1120 and that he reported a Pongu tree in the property. When measurements in Ext.A20 and Sketch II in Ext.C3 tally each other both identifying 60 cents, it is not clear as to how the Advocate Commissioner reported excess in the earlier Report in O.S.No.24/1120. The said Report does not form part of the records in the present suit. Advocate Commissioner as PW3 admitted that the Pongu tree is situated in excess land. He admitted that no where in Ext.A4 (a) Mahzar it is specifically stated that there is excess as vadavuvashi. In view of this evidence, I answer the first question that the plaintiffs did not derive any land in excess of 60 cents as per Ext.A6 Delivery Kaichit.

23. With respect to the second question, as per Ext.A21 Settlement Register, the extent of puramboke in Sy.No.416 is 58 cents.

Ext.A22/B5 BTR would show that the total extent transferred to new Re-Sy No.28 is 25.60 equivalent to 63.2576 cents. It is not clear how the extent of puramboke was increased in resurvey. It is not clear whether any private land from Old Sy.No.412 is added to Re-Survey No.28. Plaintiffs can object to Resurvey only if they prove that part of Old Sy.No.412 is taken for Re-Survey No.28. The plaintiffs does not claim possession and title over the land in Old Sy.No.416 which was puramboke land.

24. The learned Senior Counsel for the appellant invited my attention to Ext.A24 obtained under RTI Act to show the assignment of 58 cents of puramboke in Old Sy No.416 included in Ext.A21 Settlement Register. Ext.A24 would show assignments 22 cents and 25 cents to two persons and the remaining extent as 11 cents. It is seen that 22 cents is allotted on the western side of the road and 25 cents is assigned on the eastern side of the road and 11 cents is remaining as road puramboke.

25. After assignment of 47 cents (25 +22) from puramboke land of 58 cents in Old Sy.No.416, the balance is only 11 cents. But the remaining puramboke recorded in Re.Sy.No.28/17 as per Ext.A22/B5 BTR is 5.60 equivalent to 13.837, thereby showing an excess of 2.837 cents excess. It is not clear as to how the excess occurred. DW1 Village Officer could not explain to how the excess occurred to puramboke when resurvey was conducted. DW1 could not answer material questions put to him by the plaintiffs. It shows that some mistakes are there in the Resurvey. The puramboke property of 5.60 ares in Re.Sy No.28/17 is also not identified. In Sketch I in Ext.C3, the extent of the disputed puramboke is 1.14 ares. In Sketch II, the extent of disputed puramboke is 0.94 ares. The extent of the disputed puramboke could only be as shown in Sketch II of Ext.C3 as the Plaint A schedule property delivered as per Ext.A6 is correctly identified in accordance with Ext.A20 only in Sketch II of Ext.C3.

26. Thus, it is clear that property in excess of puramboke in old Sy.No.416 is included corresponding Re-Survey No.28, but the material evidence as to the status of such excess added to Re-Survey No. 28 is lacking. There is no evidence that in resurvey excess to puramboke is taken from private land belonging to the plaintiff in Old Sy No.412.

27. The substantial question of law No.3 relates to the plea of adverse possession and limitation. Admittedly the plaint B schedule property is a puramboke property. In view of Article 111 of the Limitation Act, the statutory period for claiming title on the strength of adverse possession and limitation is 30 years as against the Government. Admittedly, the plaintiff obtained the plaint A schedule property as per Ext.A6 Kaichit dated 26.09.2003. The suit was filed in the year 2004. As stated earlier there is no evidence to prove that the plaintiff obtained possession of Plaint B schedule property along with the property covered by

Ext.A6 Delivery Kaichit. The property covered by Ext. A6 Delivery Kaichit identified by Sketch No.II of Ext.C3 does not cover plaint B schedule property. There is no evidence to prove that the plaintiffs have been in possession of the plaint B schedule property. There is no evidence to prove possession for the statutory period of 30 years to claim title by adverse possession. Hence, I hold that the finding of the First Appellate Court that the plaintiffs failed to prove adverse possession over the property identified as puramboke in Ext.C3 does not require any interference.

28. The learned Senior Counsel for the appellant pointed out that Plaint B schedule property is a small extent of land which is situated between the road and the property of the plaintiffs. The official defendants are attempting to assign the said land to third parties as revealed from Ext.A23. If the said land is allotted to any third party the plaintiffs access to the road will be affected and the

same will cause substantial injury to the plaintiffs. It is true that if the plaint B schedule property identified in Ext.C3 is allotted to third parties it would affect the road frontage of the property covered by Ext.A6 delivery Kaichit belonging to the plaintiff. But it is not a ground to find that the plaintiffs are having any right over plaint B schedule property. Of course, the plaintiffs are free to raise their objections before the authorities concerned if the official defendants attempt to assign the said land to third parties.

29. In view of the aforesaid discussion, the appellant/plaintiff is not entitled to succeed in this Appeal. The substantial questions of law formulated in the appeal are answered in the negative and against the appellants. The Regular Second Appeal is dismissed.

Sd/-

M.A.ABDUL HAKHIM

JUDGE

Jma/shg