2025:KER:23404

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE N.NAGARESH

THURSDAY, THE 20TH DAY OF MARCH 2025 / 29TH PHALGUNA, 1946

SA NO. 742 OF 1999

AGAINST THE JUDGMENT DATED 22.09.1998 IN AS NO.152 OF 1991 OF I ADDITIONAL DISTRICT COURT, PALAKKAD ARISING OUT OF THE JUDGMENT DATED 30.03.1991 IN OS NO.300 OF 1986 OF ADDITIONAL SUB COURT, PALAKKAD.

APPELLANTS (APPELLANTS / DEFENDANTS 1 TO 4):

1 KRISHNAMANI
S/O.PAZHANIYAPPA MUDALI,
RESIDING AT THENARI AMSOM AND DESOM,
PALAKKAD TALUK, PALAKKAD DISTRICT.

2 SHANMUGHAN,
S/O..DO., RESIDING AT .DO. .DO.

3 RADHAKRISHNAN,
S/O.THANKAMANI, RESIDING AT .DO. .DO.

4 PARVATHY,
W/O.THANKAMANI,RESIDING AT .DO. .DO.

BY ADVS.
SMT.PRABHA R.MENON
SRI.PUSHPARAJAN KODOTH
SRI. A.P. CHANDRASEKHARAN (SR.)
SRI. M. KRISHNA KUMAR

RESPONDENTS (RESPONDENTS / PLAINTIFFS & DEFENDANTS 5 TO 7 & 10 TO 16):

* 1 CHAMIYAR, (DIED)
S/O.KUNCHAN, RESIDING AT KUTTIYAMPAK,
THENARI AMSOM, PALAKKAD TALUK,
PALAKKAD DISTRICT.

*** 2 PARIJATHAM, (DIED)**
S/O.CHAMIYAR, RESIDING AT PARAMBAKKAD, PERUVEMBA AMSOM, PALAKKAD TALUK, P ALAKKAD DISTRICT.

*** 3 RAMAKRISHNAN, (DIED)**
S/O.KUNCHAN, RESIDING AT KUTTIYAMPAK, THENARI AMSOM, PALAKKAD TALUK, PALAKKAD DISTRICT.

*** 4 RAMAKRISHNAN, (DIED)**
S/O.KANDAN, RESIDING AT VAKKALA KALAM, THENARI AMSOM, PALAKKAD TALUK.

5 CHILDREN KANNADASAN,
KANNADASAN, RESIDING AT VAKKALAKALAM, THENARI AMSOM, PALAKKAD TALUK.

6 JAGADEESH KUMAR,
RESIDING AT .DO. .DO.

7 KRISHNA MOORTHY,
RESIDING AT .DO. .DO.

(RESPONDENTS 5 TO 7 ARE RECORDED AS LEGAL REPRESENTATIVES OF DECEASED 4TH RESPONDENT AS PER ORDER DATED 16.01.2019 IN IA. NO.5/2019 IN SA. NO.742/1999)

*** 8 GOPALAN NAIR, (DELETED)**
S/O.OORANDATH KALLYANI AMMA, RESIDING AT VAKKALA KALAM, THENARI, ELAPULLY (PO), PALAKKAD TALUK.

*** 9 THILLA, (DELETED)**
S/O.KATTIYAMPAKKIL VELAYUDHAN, RESIDING AT VATHANKULUMBA, THENARI (PO), PALAKKAD.

*** 10 THATHA, (DELETED)**
W/O.VAKALAKALAM RAJAN, RESIDING AT VAKKALA KALAM, THENARI, ELAPULLY P.O., PALAKKAD.

(RESPONDENTS 8, 9 & 10 ARE DELETED FROM THE PARTY ARRAY AT THE RISK OF THE APPELLANT AS PER ORDER DATED 03.03.2010 IN IA.577/2010)

11 RAMAN,
S/O.MARUKANDI, RESIDING AT KATTIYAMPAK, THENARI AMSOM, PALAKKAD.

12 SAROJINI'S CHILDREN :
RAJESWARI,
KUTTIYAMPAK,THENARI AMSOM,
PALAKKAD TALUK.

13 RAJESH,
RESIDING AT .DO. .DO.

14 RADHIKA,
RESIDING AT .DO. .DO.

15 RENUKA,
RESIDING AT .DO. .DO.

16 RAMESH (MINOR)
16 YEARS, RESIDING AT .DO. .DO.

17 RATHISH (MINOR)
14 YEARS, RESIDING AT .DO. .DO.

(MINOR RESPONDENTS 16 AND 17 ARE REPRESENTED BY GUARDIAN FATHER RAMAN, 11TH RESPONDENT.

*** 18 KUNCHAPPAN,**
AGED 54 YEARS
SON OF CHAMIYAR, RESIDING AT KUTTIYAMPAK, THENARI (P.O.), PALAKKAD DISTRICT.

*** 19 ANANTHAKRISHNAN,**
AGED 43 YEARS
SON OF CHAMIYAR
RESIDING AT KIZHAKKEPURA KUTTAMPAK,
THENARI (P.O.), PALAKKAD DISTRICT.

(ADDITIONAL RESPONDENTS 18 & 19 ARE IMPLEADED AND 2ND RESPONDENT IS RECORDED AS LEGAL REPRESENTATIVE OF DECEASED 1ST RESPONDENT AS PER ORDER DATED 02.04.2024 IN IA.NO.2386/2011 (RENUMBERED AS IA.NO.5/2011) AND IA.NO.2388/2011 (RENUMBERED AS IA.NO.4/2011) RESPECTIVELY IN SA.NO.742/1999)

*** 20 VIJAYAM,**
AGED 65 YEARS
W/O.RAMAKRISHNAN,
RESIDING AT KIZHAKKEPPURA,
KUTTIYAMPAK,THENARI P.O.,
ELAPPULLY,PALAKKAD DISTRICT.

*** 21 RAJESH,**
AGED 40 YEARS
S/O.RAMAKRISHNAN,
RESIDING AT KIZHAKKEPPURA,
KUTTIYAMPAK,
THENARI P.O.,ELAPPULLY,
PALAKKAD DISTRICT.

*** 22 RAJEEV,**
AGED 35 YEARS
S/O.RAMAKRISHNAN,
RESIDING AT KIZHAKKEPPURA,
KUTTIYAMPAK,THENARI P.O.,
ELAPPULLY,PALAKKAD DISTRICT.

*** 23 RAMESH,**
AGED 33 YEARS
S/O.RAMAKRISHNAN,
RESIDING AT KIZHAKKEPPURA,
KUTTIYAMPAK,THENARI P.O.,
ELAPPULLY,PALAKKAD DISTRICT.

*** 24 RATHEESH,**
AGED 31 YEARS
S/O.RAMAKRISHNAN,
RESIDING AT KIZHAKKEPPURA,
KUTTIYAMPAK,THENARI P.O.,
ELAPPULLY,PALAKKAD DISTRICT.

*** 25 RAJANEESH,**
AGED 29 YEARS
S/O.RAMAKRISHNAN,
RESIDING AT KIZHAKKEPPURA,
KUTTIYAMPAK,THENARI P.O.,
ELAPPULLY,PALAKKAD DISTRICT.

(LEGAL REPRESENTATIVES OF DECEASED 3RD RESPONDENT ARE IMPLEADED AS ADDITIONAL RESPONDENTS 20 TO 25 AS PER ORDER DATED 18.06.2024 IN IA.NO.2385/2011 (IA.3/2011) IN SA.NO.742/1999.

*** 26 JAYARAJAN P.K.,**
RESIDING AT KALYANI NIVAS,
PARAMBAKKAD,PERUVAMBA P.O.,PALAKKAD-678531.

*** 27 SREEKRISHNA P.J.,**
RESIDING AT KALYANI NIVAS,PARAMBAKKAD,
PERUVAMBA P.O.,PALAKKAD-678531.

*** 28 KAVITHA P.J.,**
W/O.SIVANANDAN K.,PALANCHERIKALAM,
NENMENI P.O.,KOLLENGODE,PALAKKAD-768506.

*** 29 RADHIKA J.,**
W/O.RAJEEV V.G.,ILLATHUKULAM,
PIRAYIRI P.O.,PALAKKAD-678004.

(LEGAL HEIRS OF DECEASED 2ND RESPONDENT ARE IMPLEADED AS ADDITIONAL RESPONDENTS 26 TO 29 AS PER ORDER DATED 03.07.2024 IN IA.NO.4/2019 IN SA. NO.742/1999)

*** 30 DAKSHAYANI,**
RESIDING AT VAKKALAKALAM,NOMBIKODE,
ELAPULLY P.O.,PALAKKAD-678622.

(ADDITIONAL 30TH RESPONDENT IS IMPLEADED AS LEGAL REPRESENTATIVES OF DECEASED 4TH RESPONDENT AS PER ORDER DATED 02.04.2024 IN IA.NO.3/2019 IN SA.NO.742/1999)

BY ADVS.
RAJESH SIVARAMANKUTTY, FOR R30
MAYA C.P., FOR R30
K.V.ANTONY, FOR R30
VIJINA K., FOR R30
ARUL MURALIDHARAN, FOR R30
J.MARY HELP JOHN DAVID, FOR R1 & R4
S.RAMACHANDRAN, FOR R1 & R4

THIS SECOND APPEAL HAVING COME UP FOR ADMISSION ON 07.08.2024, THE COURT ON 20.03.2025 DELIVERED THE FOLLOWING:

N. NAGARESH, J.

‘‘

S.A. No.742 of 1999

‘‘

Dated this the 20th day of March, 2025

J U D G M E N T

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Defendants 1 to 4 in OS No.300/1986 on the files of the Sub Court, Palakkad and the appellants in AS No.152/1991 on the files of the District Court, Palakkad, are the appellants in this Second Appeal. The appellants challenge the judgment and decree dated 22.09.1998 in AS No.152/1991 and the judgment and decree dated 30.03.1991 in OS No.300/1986. In this judgment, parties are referred to as they are described in the OS, for clarity.

2. Plaintiffs (respondents 1 to 7) filed the suit for declaration that they are entitled to half of the water in the plaint schedule tanks and to restrain the defendants from

objecting to take half of the water from the tanks and further from obstructing the Ramesam Pottakulam filling with water from Kunnamkattupathy through pipe 206 and to restrain the defendants from diverting the water to the Vathankulambu Nilam from pipe 206. The plaintiffs further sought for a decree to allow them to walk through the varamba of the defendants' field to draw half the water and catch fish.

3. In the plaint, the plaintiffs stated that there are three tanks which originally belonged to Ekkanathu Tharavadu and the water from the said tanks was utilised for irrigating the paddy fields in Kuttiyambak belonging to the aforesaid family. The fields at Kuttiyambak were taken on lease by Kunjan, father of plaintiffs 1 to 3. Water from the aforesaid tanks was utilised for irrigation. Ramesam Pottakulam used to be filled up with water from Cochin Sarkar through pipe 206.

4. The Jenmi wanted to terminate the lease and the 1st plaintiff, son of Kunjan, released the entire properties to

the Jenmi on 30.03.1953. On the very same day, as per a registered lease deed, the 1st plaintiff took half of the properties on lease. Half of the properties were entrusted to the 4th plaintiff. The remaining half was retained by the Jenmi. The tanks scheduled in the plaint were also released in favour of the Jenmi. However, the right to collect half of the water from the tanks for irrigation of paddy fields in the possession of the tenants, was retained.

5. The plaintiffs stated that on the southern side of Kuttiyambak Nilam, the Jenmi had certain other paddy fields named Vathankulambu Nilam. Those paddy fields were cultivated using the water from Kunnamkattupathy channel. Water from the plaint schedule tanks was never used for irrigation of Vathankulambu paddy fields. The Jenmi sold their rights over the property retained by them to defendants 1 to 4 (appellants herein). Defendants 1 to 4 started obstructing the right of plaintiffs to take water from the tanks. They have started to pump out the water from Ramesam

Pottakulam for irrigation of Vathankulambu paddy fields. They also tried to channelise the water from pipe 206 to Vathankulambu paddy fields. They have no right to do so.

6. The plaintiffs urged that though the defendants have purchased the plaint schedule tanks, they will not get right for the entire water in the tank. The plaintiffs claimed that they are entitled to half the water in the plaint schedule tanks.

7. The defendants contended that Kunjan was not in possession as a lessee of the entire Kuttiyambak Nilam. The defendants are not aware of lease deed executed on 30.03.1953. The tanks were in the possession of Jenmi at all times. The Jenmi has not given right to the plaintiffs to use half of the water from the tanks. They are entitled only to collect the let out by the Jenmi from the tanks. The water which comes through the pipe of Kunnamkattupathy channel is used not only for Ramesam Pottakulam. It is used for certain other paddy fields also. The plaintiffs have never

taken water from the tanks. The defendants are not bound by the lease deed.

8. Based on the pleadings, the Sub Court framed the following issues:

(1) Whether the plaintiffs' father Kunjan was a lessee of Kuttiyambakkam paddy field and whether he was in exclusive enjoyment of the tanks mentioned in the plaint?

(2) Whether the surrender mentioned in the plaint is true?

(3) Whether the plaintiffs surrendered a portion of the land included in the pattom chit and took on lease the other lands and whether the plaintiffs were using the water of the tank as of right?

(4) Whether the tenants were in possession of the tanks and were using the water?

(5) Is there any cause of action for the suit?

(6) Whether the plaintiffs are entitled to get the declaration and injunction prayed for?

(7) Reliefs and costs?

The plaintiffs marked Exts.A1 to A51 documents and examined PW1. The defendants produced Exts.B1 to B4 documents. No witness was examined on behalf of the defendants.

9. After analysing the evidence, the Sub Court found that Kunjan was a lessee of Kuttiyambakkam paddy field and he was in exclusive possession of the tank mentioned in the plaint. The Jenmi had leased out the property to Kunjan as per Ext.P1. The Sub Court held that Ext.A5 clearly provides that the 1st plaintiff is entitled to half the water in Ramesam Pottakulam, Karupambully Kulam and Kongakulam. The Sub Court therefore held that the plaintiffs are entitled to a decree of injunction restraining the defendants from interfering with their right to take half of the water from the plaint schedule tanks. Accordingly, a decree was passed restraining defendants 1 to 5 from interfering with the right of the plaintiffs to take water due to them.

10. Aggrieved by the judgment dated 30.03.1991 in OS No.300/1986, defendants 1 to 4 filed AS No.152/1991. The plaintiffs also filed AS No.186/1991. The appeals were heard together. The District Court, Palakkad held that as per Ext.A5, the plaintiffs have obtained right to take water from

the plaint schedule tanks. The objections raised by the defendants would show that they are obstructing the plaintiffs. The defendants being the assignees of properties, cannot obstruct the plaintiffs from taking water through the chals situated in the property. The trial court is fully justified in granting an injunction.

11. The District Court noted that there may be practical difficulties in gauging the quantity of water available in the plaint schedule tanks. But, that cannot be taken as a ground to disallow the declaration and injunction sought for.

12. As regards the appeal filed by the plaintiffs, the District Court found that Ext.A5 does not give the plaintiffs any right to walk along the varambas of the paddy field in connection with catching of fish from the plaint schedule tanks. They have only the right to take one half of the water from the tanks. On these conclusions, both the appeals were dismissed by the District Court.

13. Aggrieved by the judgments and decrees, defendants 1 to 4 have filed this Second Appeal claiming that the following substantial questions of law arise for consideration.

> (1) Whether the permission granted by landlord to the user of water from the water tanks owned and possessed by him would not terminate once the landlord assigns the property and the tanks without reserving any right to the plaintiffs to draw water from the tanks?
>
> (2) Whether the recitals in the assignment deed in favour of the plaintiffs permitting them to draw water from the suit tanks would give them an absolute right to draw water from the tanks which have been assigned to the defendants?
>
> (3) Whether the recitals regarding the user of the water by the plaintiffs mentioned in their assignment deed is only a licence and whether it would not terminate when the landlord assigns the tanks to the defendants?
>
> (4) When the quantity of water in the water tanks could not be gauged, a decree to take half the water could be lawfully granted without laying down the mode of drawing half the quantity of water from the tanks?
>
> (5) Whether the decree granted by the lower courts is not executable and results in unnecessary litigation by the parties, more so since the right of the defendants to use the water in the tanks owned and in their possession are found to be entitled to the water for irrigating any of their properties?

14. The counsel for the appellants argued that the courts below failed to note that when the quantity of water in the three tanks could not be gauged, the courts below should not have given a declaration that the plaintiffs can draw half the quantity of water.

15. The courts below having negatived the contention of the plaintiffs that the water from the tanks could not be used by the defendants to irrigate their other lands, erred in holding that the plaintiffs could draw half the amount of water from the tanks.

16. The courts below ought to have noted that the landlord assigner has only permitted the plaintiffs to use the excess water let out from the tanks. In fact, the plaintiffs had only a licence to draw water from the tanks and the said licence stood terminated when the entire property with the tanks were assigned to the defendants. The judgments of the courts below are therefore liable to be set aside.

17. I have heard the learned counsel for the appellants and the learned counsel appearing for the respondents.

18. The specific case of the plaintiffs (respondents 1 to 7) was that the paddy fields at Kuttiyambakkam were taken on lease by Kunjan, the father of plaintiffs 1 and 3. Since the Jenmi wanted to terminate the lease, the 1st plaintiff, son of Kunjan, released the entire properties to Jenmi on 30.03.1953. On that day itself, Ext.A5 registered lease deed was executed between the parties and the 1st plaintiff took half of the properties on lease.

19. Much later, the Jenmi sold right over the property retained by them to defendants 1 to 4 (appellants herein), on 07.02.1986. After purchasing the property, the defendants obstructed the plaintiffs from drawing water from the tanks in their possession. As the defendants are purchasers of property from the Jenmi, they purchased the property with all rights and liabilities as existed on the date of sale. Ext.A5 registered deed in unequivocal terms made it clear that the

plaintiffs had right to draw half the quantity of water from the water tanks. The right of the plaintiffs over half of the water in the three tanks is made amply clear in Ext.A5 lease deed.

20. As the Jenmi was bound by the terms of Ext.A5, the defendants being assignees of the Jenmi cannot have a better right than the Jenmi. The defendants cannot deny the right of the plaintiffs. The courts below came to the right conclusion in this regard. The evidence adduced amply showed that the plaintiffs' father Kunjan was in possession and enjoyment of the tanks. The deposition of PW1 and Ext.A1 certified copy of the lease deed established the same.

21. Ext.A5 document would show that the Jenmi had leased out the property to Kunjan as per Ext.A1. The Jenmi can handover possession of the property to Chamiyar (1st plaintiff) only if the earlier lease was surrendered. Therefore, the recital in Ext.A5 as regards surrender of land has to be accepted.

22. The plaintiffs, who had filed AS No.186/1991, had sought for an injunction to restrain the defendants from interfering with the plaintiffs in walking along the varambas of the paddy fields in connection with catching of fish from the plaint schedule tanks. Ext.A5 document did not contain recitals in respect of grant of such a right to walk or to catch fish. The grant was only for drawing water from the plaint schedule tanks for irrigation purpose. The District Court therefore rightly refused the contentions of the plaintiffs to that effect. The District Court, however, held that the defendants cannot restrain the plaintiffs from walking along the varambas for the purpose of taking one half of the water from the plaint schedule tanks.

23. The recitals in Ext.A5 clearly gave a right to the plaintiffs to the user of water from the water tanks scheduled in the plaint. Such right would not get terminated if the landlord assigns the property and the tanks to the defendants. The recitals in Ext.A1 assignment deed in favour of the

plaintiffs give an absolute right to the plaintiffs to draw water. It cannot be treated as a mere licence revokable at the hands of assignees. The mere fact that the quantity of the water in the water tanks cannot be measured, will not disentitle the plaintiffs from getting a decree of the court. The decree passed by the courts below cannot be described as unexecutable.

For all the above reasons, I find that the Second Appeal preferred by the appellants / defendants 1 to 4 is without any merit. The Second Appeal fails and it is hence dismissed.

Sd/-

N. NAGARESH, JUDGE

aks/17.03.2025