

(2012) 08 KL CK 0155

In the High Court Of Kerala

Case No : Regular Second Appeal No. 1439 of 2011

Kandamuthan, Sivarajan and Kamarajan

APPELLANT

Vs

Velappan

RESPONDENT

Date of Decision : 13-08-2012

Acts Referred:

Citation : (2012) 08 KL CK 0155

Hon'ble Judges : Thomas P. Joseph, J

Bench : Single Bench

Advocate : Sumathy Dandapani and Sri. Millu Dandapani, for the Appellant; Sajan Vargheese K., (Caveator-Respondent) and Sri. Liju M.P., (Caveator), for the Respondent

Final Decision : Dismissed

Judgement

Thomas P. Joseph, J.—Heard. Admit.

2. The following substantial question of law is framed for a decision:

Whether, on the facts and circumstances of the case, the claim of appellants over the 20 cms. wide space noted by the Advocate Commissioner in Ext. C2(a) could be accepted?

3. Respondent/plaintiff appears through counsel.

4. In view of the decision I propose to take after hearing the learned counsel on both sides and since a copy of Ext. C2(a) is given to me for perusal, it is not necessary to call for the records of the case.

5. The second appeal arises from the judgment and decree of learned II Additional District Judge, Palakkad in A.S. No. 419 of 2009 confirming the judgment and decree for prohibitory and mandatory injunction granted by the learned Munsiff, Chittur in O.S. No. 532 of 2007.

6. The suit property as amended is 10 = cents in R.S. No. 41/2 claimed by the

respondent as per Ext. A2, assignment deed No. 550 of 1984. According to the respondent, the appellants have encroached into a portion of the suit property and put up barbed wire fencing. Hence the suit.

7. Appellants contended that the property on the west of the suit property belonged to the 3rd appellant as per Ext. B1, purchase certificate of the year, 1995. He has to secure his property and for the said purpose, constructed boundary on the eastern side by putting up barbed wire fencing. Appellants denied the allegation of trespass.

8. The trial court found that there is trespass into the suit property and accordingly, directed the appellants to remove the barbed wire fencing towards western side of the suit property. The trial court also granted a decree for prohibitory injunction.

9. Though the appellants challenged that judgment and decree in A.S. No. 419 of 2009 but did not succeed. Hence the second appeal.

10. The learned Senior Advocate for the appellants has contended that Ext. C2(a), plan would show that the foundation constructed by the respondent projects into the property of the appellants by 20 cms. at a length of 13.8 metres as shown in Ext. C2(a), plan. It is contended by the learned Senior Advocate that in the circumstances, respondent is not entitled to the reliefs prayed for.

11. There was some talk of settlement after the second appeal was filed in this Court. Appellants were permitted to get their property measured with the assistance of the Taluk Surveyor. Accordingly, the Taluk Surveyor measured the property. Appellants have produced the certified copy of the thandaper account.

12. The dispute between the parties has now dwindled down to the alleged projection of foundation of the respondent into the property of the appellants by 20 cms. at a length of 13.8 metres as shown in Ext. C2(a).

13. Having regard to the fact that the dispute is only regarding the portion of property having width of 20 cms. at a length of 13.8 metres I am inclined to think that the dispute could be resolved by directing the parties to take half each of the said 20 cms. wide space (at a length of 13.8 metres as shown in Ext. C2(a)). On the said suggestion I have also considered the views of the learned counsel on both sides. The substantial question of law framed is answered as above. Resultantly the second appeal is allowed in part as under:

i. The judgment and decree of learned II Additional District Judge, Palakkad in A.S. No. 419 of 2009 and of learned Munsiff, Chittur in O.S. No. 532 of 2007 are modified to the following extent:

(a) It is directed that the 20 cms. wide space (at a length of 13.8 metres) shown by the Advocate Commissioner in Ext. C2(a) shall be taken by the appellants and the respondent equally, ie. 10 cms. wide space on the western side to the appellants and the corresponding 10 cms. wide space on the eastern side, to the

respondent.

(b) It is open to any of the parties to construct boundary wall along the said 13.8 metres long space taking in the 10 cms. wide space as above stated as well, provided that the boundary is constructed within the 10 cms. wide space coming within the respective portions of the property belonging to the appellants and the respondent.

ii. Parties shall suffer their costs throughout.

iii. In other respects, judgment and decree of the courts below will stand confirmed.

All pending interlocutory applications will stand dismissed.