
(1957) 06 KL CK 0013
In the High Court Of Kerala
Case No : S. A. 1117 of 1954 (M)

Krishnamoorthy Iyer

APPELLANT

Vs

Janaki Amma and Another

RESPONDENT

Date of Decision : 27-06-1957

Acts Referred:

Citation : (1957) KLJ 722

Hon'ble Judges : G. Kumara Pillai, J

Bench : Single Bench

Advocate : K.P. Ramakrishna Iyer, for the Appellant; K. Kuttikrishna Menon, for the Respondent

Final Decision : Dismissed

Judgement

Kumara Pillai, J.—This second appeal arises out of a suit for a permanent injunction which was dismissed by the first court but decreed, on appeal, by the lower appellate court. Defendant 1 is the appellant. The case has been argued by both sides before me with reference to Ext. A2 plan and so I am also making use of that plan for stating the case. Plots A and B in Ext. A. 2 are comprised in Survey No. 1411/1A and measure in all 23 cents. Plot A lies in the northwestern portion of this survey number and is bounded on the east and south by plot B. On the north plot A is bounded by a lane and the major portion of that plot is bounded on the west by a property belonging to one Kunhikutty Amma. South of Kunhikutty Amma's property there is another property shown in the plan as Thankamma's kudiyruppa and that property lies to the west of the southern portion of plot A and to the west of that part of plot B which lies south of plot A. The property to the south of plot B is a teak plantation which admittedly belongs to the plaintiffs. To the east of plot B lies survey No. 1411/1B which is shown as Koman Nayar's kudiyruppa in Ext. A2. Koman Nayar purchased this plot, i.e., survey No. 1411/1B, from one Chettiar, and till his purchase that property was known as Chettiarsthalam. On the north plot B is bounded by the same lane which runs along the northern boundary of plot A. The line MNP in Ext. A2 is the

northern boundaryline of plots A and B, the line MN being the portion forming the northern boundary of plot A and the line NP being the portion forming the northern boundary of plot B. Plaintiff 1 is admittedly the jenmi of plots A and B. In 1931 she gave a verumpattom lease, Ext. A. 1, in favor one Lakshmi Amma, and the main dispute in the present case is the identity of the plot she leased thereunder. In the lease deed the boundaries of the leased plot were given as the lane on the north, Chettiarsthalam on the east, plaintiff's own land on the south and Kunhikutty Amma's property on the west, and the extent was given as 3 cents. The rent stipulated is Re. 1/- per year. The plaintiff's case is that the lease under Ext. A. 1 was for a Kudiyruppa for Lakshmi Amma and that only 3 cents of land forming the northern portion of plot A alone was leased thereunder. By successive assignments, defendant 1 has now obtained the rights of Lakshmi Amma under Ext. A. 1. His case is that what was leased under Ext. A. 1 was the whole of survey No. 1411/1A, i.e., both plots A and B, and not merely 3 cents, and in support of this case he relies upon the description of the property in some of the subsequent assignments including the last assignment executed in his own favor by his immediate predecessor, defendant 2. In the assignments relied upon by him the extent of the property is mentioned as 23 cents and the boundaries are described in the same manner as in Ext. A. 1. Ext. B. 1 dated 4-5-1949 is the assignment which defendant 2 got, and Ext. B. 2 dated 18-6-1951 is the assignment defendant 2 has executed in favor of defendant 1. Dw. 2 is defendant 1's father. Both sides admit that, at the time of the execution of Ext. B. 2, there was a fence along the MNP line for preventing cattle from straying from the lane into the land on the south. Dw. 2 says that after taking Ext. B. 2 he pulled down the fence along the MNP line for repairing and putting up a new fence along the whole line. Alleging that, after taking Ext. B. 2, defendant 1 was attempting to take forcible possession of plot B which was in the possession of plaintiff 1 and he was interfering with the fence along the NP line in order to make out that plot B also belongs to him and is in his possession, plaintiff 1 and her son, plaintiff 2, brought the present suit for a permanent injunction to restrain defendants 1 and 2 from taking possession of plot B and interfering with the fence along the NP line. Defendants contended that plot B also was included in Ext. A. 1 lease, that ever since the execution of Ext. A. 1 the said plot was in the possession of the lessees and defendant 1 had obtained possession of it under Ext. B. 2 and was in lawful possession, and that the injunction asked for by the plaintiffs could not be granted. These contentions were upheld by the trial court which dismissed the suit, but on appeal by the plaintiffs, the lower appellate court found the plaintiffs' case to be true and decreed the suit. The appellant's main contention in this court was that the boundaries given in Ex. A. 1 would take in plot B also and that, when there is a conflict between the description of the boundaries and the extent of the land given in a document, the description of the boundaries should be preferred to the extent, and so, it should be held that what was leased under Ex. A. 1 was the whole of survey No. 1411/1A including both plots A and B and not merely 3 cents in plot A. The usual rule, no doubt, is that when there is a conflict between the area and the boundaries mentioned in a document the

description of the boundaries should be accepted in preference to the area mentioned in the document for determining the extent of the land conveyed thereunder. But, this is not an inflexible or infallible rule, and even in the cases in which this rule has been applied it has been pointed out that when, from the proved circumstances, it is clear that the intention of the parties was only to convey the extent mentioned in the document, even though the boundaries would take in a larger area, effect has to be given to their intention and the description of the boundaries cannot be allowed to prevail. In *Ibrahim Koyakutty v. Varghese* (1951 K. L. T. 117), wherein the description of the boundaries was preferred to the extent mentioned in the document the rule to be applied has been stated as follows:

In the absence of circumstances indicating that the application of the boundaries in determining the extent of the land that passed under the conveyance will lead to an error usually in cases of conflict between the area, survey number and the boundaries mentioned in the documents the boundaries predominate and the rest is considered only as false or erroneous description.

After stating this rule their Lordships said:

In this case there are no such circumstances and therefore we are clearly of the view that the disputed property is included in the documents mentioned above.

In *Zamindar of Pachipenta v. Maharaja of Jeypore* (23 Madras Law Journal, at page 97) Benson and Sundara Aiyar, JJ., have said :

Where there is a conflict between the boundaries and measurements more importance would no doubt be ordinarily attached to the boundaries. But this is only because parties generally pay more attention to the boundaries than to the measurements of property intended to be conveyed. The question in every case is what was the intention in that case.....Where there are two conflicting descriptions of the subject matter of a grant, or two conflicting parts of the same description that which is the more certain and stable and the least likely to have been mistaken or to have been inserted inadvertently, must prevail, if it sufficiently identifies the subject matter. This, again is not a rule of law and hence infallible in its character, but a mere rule of construction, which serves as a safe and almost infallible guide in determining the intention of the parties, which is the touchstone of all true interpretation. Indeed, it is all controlling and predominates over all the elements of description of the subject matter.

When a part of an unoccupied or hilly land, which part has no separate and clear boundaries, is conveyed it is not unusual to describe the land conveyed by stating the boundaries of the whole property of which the portion conveyed forms a part and then state so much extent in that property is conveyed. The commission report in the present case as well as Ext. A1 show that, at the time of the execution of the lease, plots A and B as well as the land to the south of plot B belonging to the plaintiffs were parts of a teak plantation and that the

lease was granted to Lakshmi Amma for the purpose of a kudiyruppa. Even now, plot B is lying as vacant land and the teak trees standing therein appear to have been felled only about seven or eight years before the institution of the suit. The Commissioner found sproutes, seven or eight years old, growing up from the stumps of the trees felled from plot B. Therefore such significance cannot be attached, in; this case, to the description of the boundaries. The southern boundary given in Ext. A1 would fit in with both cases, for, the southern boundary would be the plaintiffs' land whether plot A alone was leased or whether plots A and B were included in the lease. The northern boundary also would fit in with both cases. The eastern boundary given is, no doubt the eastern boundary of plot B, and the description of that boundary is, therefore, inconsistent with the plaintiffs' case. But the western boundary is equally inconsistent with the defendants' case. If both plots A and B were included in the lease not only Kunhikutty Amma's kudiyruppa but Thankamma's kudiyruppa also should have been mentioned as the western boundary. But the appellant's learned counsel contends that no significance can be attached to the western boundary since, although Thankamma's kudiyruppa and Kunhikutty Amma's kudiyruppa both lie to the west of plot A, only Kunhikutty Amma's kudiyruppa has been mentioned as the western boundary in Ext. A1. He contends that the failure to mention Thankamma's kudiyruppa also as the western boundary was only due to an over-sight or casual omission. This argument, however, overlooks the fact that the plaintiff's case is that only 3 cents of land in the north-western portion of survey No. 1411/1A was leased under Ext. A1 and not that the whole of plot A was leased thereunder. No doubt, defendant 1 is now in possession of the whole of plot A. But that may be due to old trespass by the lessee on unoccupied forest land which was not objected to or noticed by the jenmi when it was made. There can be no doubt from Ext. A2 plan that, if 3 cents of land alone was leased under Ext. A1, the western boundary would be only Kunhikutty Amma's kudiyruppa and no part of the leased plot would lie to the east of Thankamma's kudiyruppa. Thus the description of the western boundary is inconsistent with the defendants' case and the description of the eastern boundary is inconsistent with the plaintiffs' cases and the description of the other two boundaries would fit in with both cases. In these circumstances, it is clear that some error has crept in the description of the boundaries in Ext. A1, and so, it is not possible to accept the description of the boundaries as evidencing the intention of the parties.

2. The extent of the land is clearly mentioned in the document as 3 cents. The purpose the lease was also to enable Lakshmi Amma to have a kudiyruppa, and the rent fixed was only Re. 1/- per year. These are circumstances which would show that the plaintiffs' case that the plot leased was only 3 cents is highly probable and true. The inference arising from these circumstances is greatly strengthened by another fact. At the time of the commissioner's visit there were in plot B 60 stumps of teak trees which had been cut about seven or eight years before. At the time of the execution of Ext. A1 there were only seven teak trees

in the leased plot. That fact is expressly mentioned in Ext. A1. This statement regarding the number of trees in Ext. A1 proves positively that plot B in which there were 60 trees could not have been intended to be included in the lease. As against these circumstances, the appellant's counsel relies upon the fact that, in Exts. B1 B2 and B4-the subsequent assignments of the lease - the extent of the property is mentioned as 23 cents. There were two assignments after Ext. A1 and before B. 4. The defense has not produced either of these assignments. It is not correct to say that the extent is given as 23 cents in Ext. B4. As pointed out by the learned appellate judge, what is stated in Ext. B4 is that the leased property is included in survey No. 1411/1A which measures 23 cents and not that the leased property is 23 cents. No doubt, the extent is given in Exts. B1 and B2 as 23 cents. Plots A and B as well as Chettiarsthalam lying to the east of plot B were originally comprised in the same survey number, survey No. 1411/1. After Koman Nayar purchased Chettiarsthalam a sub-division was effected and the No. 1411/1A was given to plots A and B which belonged to the plaintiffs and survey No. 1411/IB was given to Chettiarstalam which was purchased by Koman Nayar. It is after this Sub-division that defendant 2, an ex-police constable and a vakil's clerk, took Ext. B1 assignment, and it is in Ext. B1 that it is clearly stated for the first time that the extent of the leased plot is 23 cents. In these circumstances, there is considerable force in the plaintiffs' contention that the statement regarding the extent in Ext. B1 was probably a manipulation by defendant 2 with the object of making a future attempt to take possession of plot B also on the strength of the mistake committed in the description of the boundaries in Ext. A1. Ext. B2 naturally follows the description in Ext. B1.

3. The oral evidence also is in favor of the plaintiffs' case. Beyond Dw. 1 who is defendant 2 and Dw. 2 who is defendant 1's father, the defendants have no evidence to show that the lessees were ever in possession of plot B. Pw. 3 is the person who took Ext. B. 4 assignment and executed the assignment in favor of defendant 2's assignor. He swears that he was in possession of only plot A and not of plot B also. It is significant that the assignment executed by Pw. 3 in favor of defendant 2's assignor has not been produced by the defendants. Pw. 4 is a person who was living in plot A under defendant 2. Defendant 2 was never living in the leased property. He took the assignment, Ext. B. 1 only for the purpose of sub-letting the property. Pw. 4 says that he too was in possession of only plot A and not of plot B also. Pw. 2 is the writer of Ext. A. 1. His evidence also is to the effect that the parties intended to lease only 3 cents of land for a kudiyruppa under Ext. A.1. In the circumstances, I am satisfied that the appellate Judge's finding regarding ownership and possession of plot B is correct. In view of the evidence of Pws. 3 and 4 the appellant's case that the defendants have perfect title by adverse possession of plot B cannot be accepted at all. For the reasons stated above, the decree of the lower appellate court is confirmed and this second appeal is dismissed with costs.