

Kerala High Court

Abraham Mariakutty vs State Of Kerala on 18 February, 2008

IN THE HIGH COURT OF KERALA AT ERNAKULAM

SA No. 861 of 1996()

1. ABRAHAM MARIAKUTTY

... Petitioner

Vs

1. STATE OF KERALA

... Respondent

For Petitioner :SRI.SIBY J.MONIPPALLY

For Respondent :GOVERNMENT PLEADER

The Hon'ble MR. Justice HARUN-UL-RASHID

Dated :18/02/2008

O R D E R

HARUN-UL-RASHID, J.

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S.A. NO. 861 OF 1996  
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Dated this the 18th day of February, 2008

JUDGMENT

This appeal is directed against the judgment and decree dated 30.10.1995 in A.S. No.116 of 1994 on the file of the Sub Court, Pala. The appellants are the plaintiffs in the suit. The suit was filed for declaration of the plaintiffs' title to the plaint schedule property and for recovery of damages. The Munisff,s Court, Pala decreed the suit. On appeal by the defendant, the appellate court reversed the finding of the trial court and dismissed the suit. Hence, this appeal.

2. The parties to this appeal are referred to as plaintiffs and defendant as in the suit. The brief averments in the plaint and written statement are as follows:

The plaint schedule property belonged to the plaintiffs. The northern side of the plaint schedule property is bounded by a very old kayyala and within the boundary kayyala on the northern part of the property there is an Anjili tree. The plaintiffs cut down the Anjili tree for their own purpose. According to the plaintiffs, the Anjili tree was not standing in the puramboke land, but within the compound wall and even if a portion of the property within the boundary kayyala is puramboke land, the plaintiffs and their predecessors were in possession of the property for the last 70 years and, therefore, the title of the defendant, if any, is lost by adverse possession and limitation. The plaintiffs further alleged that the timber which was in their possession was removed by the defendant on a false pretext stating that the plaintiffs have no manner of right over it.

According to the plaintiffs, the action of the Village Officer to auction the timber is illegal and that the State has no right over the plaint schedule property. The plaintiffs, therefore, sought declaration of title and damages to the tune of Rs.3500/- and other ancillary reliefs.

The defendant filed a written statement denying the claim of the plaintiff. The defendant contended that the Anjili tree cut by the plaintiffs stood in the puramboke land which is vested in the Government and the State defended the action of the Village Officer and the Revenue Officer who proceeded to auction the timber. The defendant also denied the right of the plaintiffs to claim any damages.

3. The plaintiffs examined PWs.1 to 4 and marked Exts.A1 to A3.

The defendant examined DWs.1 and 2 and marked Exts.B1 to B1(c).

Exts.C1 and C2 are the commission report and plan which were subsequently set aside. The further report and plan obtained by the court below are marked as Exts.C3 and C4. The trial court, on a consideration of the matter on evidence, concluded that the defendant/State has absolutely no right over the timber in question. The trial court further held that the plaintiffs have title over the land where the Anjili tree stood, by adverse possession and, therefore, the ownership of the tree which stood in the land in question is with the plaintiffs. The trial court further found that the discretionary remedy of granting declaration of title on the basis of adverse possession prayed for by the plaintiffs can be exercised in this case, finding that the property where the Anjili tree stood is puramboke land and considering the possession and enjoyment of the plaintiffs and their predecessors for the last more than 60 years.

4. In appeal, the appellate court re-appreciated the evidence on record. The appellate court also considered the question as to whether the suit is bad for non-joinder of necessary parties and held that the suit is bad for non-joinder of the Tahsildar, Meenachil and the concerned panchayat as parties to the suit. The appellate court also found that the plaintiffs failed to prove the plea of adverse possession and that the defendant has no right over the puramboke land and the Anjili tree. Having found so, the appellate court held that the plaintiffs are not entitled to the declaration

sought for and also the damages claimed by them.

5. The plaint schedule property is having an extent of 3 acres and 6 = cents lying within the boundary. According to the plaintiffs, they are in possession and enjoyment of the same and sought declaration of title alleging that even if any portion of the plaint schedule property is found to be puramboke land, the plaintiffs and their predecessors being in possession of the property for more than 75 years continuously and uninterruptedly as of right, the right of the defendant has been lost by adverse possession and limitation.

6. Ext.C3 commission report and Ext.C4 plan would undoubtedly show that the extent of the plaint schedule property is not 3 acres and 6 = cents, but 3 acres and 19 cents. The puramboke portion of the property was found to be in Survey No.97/4. The plaintiffs have no case that they have obtained any right over the property comprised in Survey No.97/4 as per their document of title. So, on evidence, both the courts below found that the Anjili tree stood in the puramboke land which, according to the plaintiffs belongs to the Panchayat. Admittedly, the plaintiffs seek declaration of title by adverse possession and limitation. The suit without the lawful owner in the party array is not maintainable for non-joinder of necessary parties. The view taken by the appellate court that a declaration cannot be granted for the reason that the true owner is not in the party array seems to be a correct view. The further question whether the right of the defendant over the plaint schedule property has been lost by adverse possession and limitation on account of the long continued possession of the plaint schedule property by the plaintiffs was also considered by the lower appellate court. The lower appellate court found that a portion of the property including the portion where the Anjili tree stood is a puramboke land. PW.2, the Deputy Superintendent of Survey who measured the property and prepared Ext.C4 plan testified that the final sketch of Survey No.97/4 was with him at the time of measurement of the property. The appellate court noted that during cross-examination PW.2 had specifically stated that Ext.C4 was prepared on the basis of the measurement with reference to the final sketch of Survey No.97/4 and the attested copy of the original plan in Survey No.95/2. The Advocate Commissioner who was examined as PW.3 also testified before the court that the measurement in Ext.C4 plan tallied with the final sketch of Survey No.97/4 and the copy of Survey No.95/2. The evidence of the only independent witness, PW.4, was disbelieved by the appellate court for the reasons stated in the judgment. The lower appellate court, from the evidence and documents made available before it, concluded that the Anjili tree stood in the puramboke land in Survey No.97/4 and that after the amendment of the plaint incorporating the relief for declaration, no evidence was adduced by the plaintiffs to prove adverse possession and limitation. On the basis of the facts and circumstances discussed in detail, the appellate court held that the evidence available is not at all sufficient to prove the plea of adverse possession.

7. The materials on record were appreciated by the trial court as well as the appellate court. The findings on all the issues are arrived at on the basis of facts and evidence. I am not inclined to interfere with the factual findings entered by the lower appellate court which cannot be characterised as perverse. I find that the case was decided on merits solely on the basis of the materials before the court. No question of law, much less any substantial question of law arises for consideration in this Second Appeal.

In the result, the appeal fails and it is accordingly dismissed. There will be no order as to costs.

(HARUN-UL-RASHID, JUDGE) sp/ HAURN-UL-RASHID, J.

S.A.NO861 of 1996 JUDGMENT 18TH FEBRUARY, 2008