IN THE COURT OF THE SUB JUDGE, SULTHANBATHERY

Present: Smt.Sreeja Janardanan Nair, Sub Judge

Monday, the 30th day of September, 2024
8th day of Aswina, 1946

ORIGINAL SUIT No.95/1994

Harrisons Malayalam Ltd., Sentinal Roack Estate, Represented by one of its Principal Officers and duly constituted attorney and presently Group Manager, Benjamin Thomas.	Plaintiff

Vs.

1. Kurian Joseph, S/o.Ouseph, (died) Poovakode Veedu, Puzhamudi, Kalpetta Post and Village, Vythiri Taluk, Wayanad District. 2. Supplemental defendant: Eali, Age not known, W/o.Kurian Ouseph, Poovakode Veedu, Puzhamudi, Kalpetta Post and Village, Vythiri Taluk, Wayanad District. 3. Kurian, Age not known, S/o.Kurian Ouseph, Poovakode Veedu, Puzhamudi, Kalpetta Post and Village, Vythiri Taluk, Wayanad District. 4. John, Age not known, S/o.Kurian Ouseph, Poovakode Veedu, Puzhamudi, Kalpetta Post and Village, Vythiri Taluk, Wayanad District. (Supplemental defendants No.2 to 4 impleaded and amended as per order in IA 1247/95 and IA 1248/95 dated 05.06.1996) 5. Annakutty @ Alice, Aged 52 years, Modamattathil House, Payyampally Post, Mananthavady.	Defendants

6. Thressiamma Joseph, Aged 50 years,
Nambisseriyil House, Post Manjoora,
Pozhuthana, Vythiri Taluk,
Wayanad District.
7. Laila Joseph, Aged 48 years,
Poovakottil House, Sasimala Post,
Pulpally, Wayanad District.
8. Mini Joseph, Aged 45 years,
Poovakkottil House, Vakery Post, Meenangadi,
Wayanad District.
9. Philomina, Aged 43 years,
Poovakkottil, Elambasseril House,
Kallody Post, Mananthavady Taluk,
Wayanad District.
10. Mary Joseph, Aged 40 years,
Poovakkottil, Karanirappel House,
Manjoora Post, Pozhuthana,
Wayanad District.
11. Joody Joseph, Aged 35 years,
Poovakkottil House, Attamala,
Vellarmala Post, Meppady,
Wayanad District.
(Supplemental defendants No.5 to 11
impleaded as per order in IA 417/2008
dated 26.08.2008)

Defendants

This Original Suit is coming on 28th day of September, 2024 for final hearing before me in the presence of Sri.M.D.Venkitasubramanian, Advocate for plaintiff and Sri.C.P Poulose and Sri.N.K.Baburaj, Advocate for defendants and having stood over for consideration to this day the court delivered the following:-

JUDGMENT

The suit is one for recovery of possession and injunction.

2. ***The Plaint averments in brief are as follows:-*** The plaintiff company was originally known as the Malayalam Plantations Ltd. under a scheme of amalgamation and merger of the said company with M/s.Harrisons Crisfiled Ltd. as approved by the Honourable High Court of Kerala in CP No.1383 and also by the Registrar of the companies and company law board, the name of the plaintiff has been changed to Harrisons Malayalam Plantations Ltd.

3. The plaint A schedule property belonged to Parry and Company Ltd. under a deed of indenture of exchange dated 26.03.1943 and registered as document No.1678/1943 of the office of the District Registrar of Madras entered into between the plaintiff company and the Parry and Company limited. The properties referred to in the 1st schedule thereto, belonged to Malayalam Plantations Ltd. was conveyed to Parry and company and in consideration and exchange thereof, the properties referred as 2nd schedule thereto and delineated in plans 3 and 4 annexed thereto and including the plaint schedule property was conveyed by Parry and Company to the plaintiff company. The plaint A schedule property is described in 2nd schedule thereto, which comprising of the entire extent of 1.29 acres was conveyed to the plaintiff company and the plaintiff company was in possession and enjoyment of the same an ancillary land required for the purpose of ancillary to cultivation of the plantation crops and for preparation of the same for market. No body else other than the plaintiff

company has any manner of right or title over the said property. The plaint B schedule and C schedule property form part of plaint A schedule property.

4. On one side of plaint A schedule property runs a river and the Eranadu Taluk boundary. The plaintiff company and its executive who are transferred of and on to the various estates of the plaintiff company in Kerala and Tamilnadu and the Managers keep changing. On 01.04.1987 the 1st defendant trespassed upon the plaint B schedule property and reduce the same to his unauthorized possession. He has no manner of right over the B schedule property. Though the plaintiff is entitled to mesne profit from the date of trespass, he confirms his claim only from the date of suit till recovery of possession.

5. On 23.03.1944 the 1st defendant attempted to trespass upon the plaint C schedule property which is lying adjacent to the plaint B schedule property. As it was resisted by plaintiffs men, 1st defendant has for the time gone away, but it is learnt that 1st defendant is actively organizing himself to commit organized trespass in the plaint schedule property.

6. The 1st defendant contented that some portion of the plaint B schedule property have been transferred to his wife and two sons who are impleaded as supplemental defendants 2, 3 and 4 and they are in possession of said portion. But the said persons also have no manner to right over the plant B and C schedule properties. The Advocate Commissioner has filed report stating that the plaint C schedule property is under developed land and that no improvements. So the property is in the possession of the plaintiff company,

but, if the court finds that the plaintiff has not proved possession over the plaint C schedule property. Plaintiff is entitled for the alternative relief of recovery of possession of the plaint C schedule property on the strength of his title. The defendants' plea of adverse possession is false. Hence, the suit.

7. ***The 1st defendant filed written statement with following contentions:-*** He has denied the entire averments in the plaint. He has challenged the authority of person who signed in the plaint. The defendant is in possession of 58 acres of land in survey No.1169 and the plaintiff company or the Parry and Company was never having any right over the same. From the descriptions of the properties their extent and boundaries shown in plaint A, B and C schedule, it is not possible to identify the same.

8. Out of the above 58 acres in S.No.1169 belonging to the defendant, 24 acres and 50 cents were got by him as per the registered assignment deed No.4282/1979. Adjoining the said property in the same survey number, about 34 acres of property was in his actual possession from 1970-71 onwards. The property obtained by him as per document No.4282/1979 from one Kesavan Nair was in his possession since several years of assignment deed on the basis of an agreement with Kesavan Nair. In that property, he was permanently cultivating pepper, coffee, arecanut, orange, coconut etc. on the northern side and on the southern side he was cultivating ginger etc. and it was in his actual possession and enjoyment. The defendant and his predecessors are cultivating the said land availing loan from Coffee Board and Kerala Co-operative Central Land Mortgage Bank on the security of the property and obtained coffee licence and coffee account from the Range Office of Central Excise. The suit is filed to grab the property of the defendant on the basis of false documents and altering

the survey number of the property etc. The allegation of the trespass is baseless. The plaint B and C schedule properties are in the possession of defendant since 1970-71 and his predecessors continuously and anybody else has got any right over the same, it is lost by adverse possession and limitation and ouster. Out of the entire properties in the possession of the defendant, 4 acres was given by him to his wife Eali in 1989, 4 acres 50 cents each to his sons Kuriyan and John as per gift deeds and the said properties are in their possession.

9. Defendants No.2 to 4 filed written statement adopting the same contentions of the 1st defendant. As 1st defendant died during the pendency of the suit the other legal representatives of him where impleaded as defendants No.5 to 11. Defendants No.5 to 10 did not file any written statement. 11th defendant filed the written statement adopting the contentions of the 1st defendant.

10. ***<u>From the above pleadings the following issues were framed for trial:-</u>***

1. Whether the plaintiff has title to the plaint B and C schedule properties?
2. Whether the plaintiff is entitled to get recover the possession of plaint B schedule property?
3. Whether the plaintiff is entitled to recover the mesne profit, if so what is the quantum?
4. Whether the plaintiff has possession over plaint C schedule property?
5. Whether the plaintiff is entitled for the injunction for

plaint C schedule property?

6. Relief and costs?

Additional issues

7. Whether the extent and boundaries of the plaint schedule property are shown correct?
8. Whether the plaint B and C schedule properties are parts of plaint A schedule property?
9. Whether A schedule is identifiable?
10. Whether the right if any of plaintiff is lost by adverse possession and limitation?
11. Whether the plaintiff has title over plaint A schedule property?
12. Whether the plaintiff is entitled to get a decree of recovery of possession of plaint C schedule property?

11. On the side of plaintiff, Exts.A1 to A6,A7 series and A8 were marked and on the side of defendants DW1 and DW2 were examined and Exts.B1 to B10 were marked. Exts.C1 to C4 and Exts.X1 and X2 were marked.

12. The history of the case is that, after appreciating the evidence on record and after hearing parties, this court dismissed the suit on 19.06.2010. Against the said judgment, the plaintiff filed RFA 69/10 before the Honourable High Court of Kerala. The Honourable High Court by its judgment dated 12.08.2014, set aside the judgment and decree of dismissal and the matter

remanded to this court for fresh consideration in the light of the observations made therein.

13. In para 4 of the judgment of Honourable High Court of Kerala, the Honourable court observed that *"it is alternatively contented that the defendants have absolute possession of the properties openly, continuously and uninterruptedly, even adverse to all and thereby they are entitled to possessory title on account of adverse possession and limitation. Strangely enough, it has been further contented that the property in question is a private forest, thereby the plaintiff cannot claim any title over the property on account of section 3(1) of the Kerala Private Forest (Vesting and Assignment) Act 1971."*

14. The Honourable High Court of Kerala further observed in para 4 that the court below by mainly rely on "*the revenue records relating to payment of tax to the resurvey and also on the basis of resurvey records, held that the plaintiff cannot claim title over the property. By finding the title of the defendants over plaint B and C schedule properties, the court below has chosen to dismiss the suit through the impunged judgment*."

15. The Honourable High Court of Kerala in para 7 observed that "*though the defendants have claimed title over the property specifically by pointing out that the original defendants have purchased the property through a title no such document was produced by the defendants for the reasons best known to them only. When the original defendant had claimed absolute title over an extent of 24.50 acre of property through a sale deed, in fact the said defendant cannot claim any possessory title on account of adverse possession*

and limitation. When the defendant had taken a plea of adverse possession and limitation with regard to a piece of land it necessary involves his unequivocal admission of the title of the plaintiff over such piece of land. When the defendant has failed to produce their document of title, it speaks volumes against the defendant with regard to their title over 24.50 acres of land as well as their claim for adverse possession and limitation over it."

16. The Honurable High Court of Kerala in para 11 holds that "*the court below shall not treats the resurvey records by which tax was paid by the defendant, after resurvey in respect of the property to trace title of any of the persons over the properties*."

17. With these observations the Honourable High Court holds that it is premature to content that the properties in question are part of private forest, that the parties are at liberty to adduce evidence in order to ascertain whether the properties forms part of private forest and on the title.

18. After remanded by Honourable High Court of Kerala, defendants 3, 4, 8, 9 and 11 filed a petition as IA 967/19 to remit the Commission report filed by the Advocate Commissioner on 06.10.2004, as IA 967/19. This court dismissed the application. Against the same, defendants filed OP(C) 315/20 before the Honourable High Court of Kerala and the suit stood stayed. The said Original Petition was dismissed by the Honourable High court of Kerala on 02.08.2024.

19. After vacating the stay, the plaintiff has adduced further evidence as Exts.A7, A7(a) and A8 and the defendants have adduced further evidence as Ext.C3.

20. Heard both sides. The plaintiff has filed argument notes.

21. ***Additional issues No.7 to 9:-*** As these issues are inter-connected, all these issues can be considered together, for the sake of convenience, brevity and to avoid repetition. There are three schedules of property in the plaint. Plaint A schedule property, plaint B schedule property and plaint C schedule property. Plaint A schedule property having an extent of 129.86 acres in R.S No.1214 (old S.No.1231). Plaint B schedule property is having an extent of 28.04 acres in the same survey number but in new resurvey number 319(part). Plaint C schedule property consists of 2 items having an extent of 6.13 acres and 8.48 acres in the same survey numbers, but new survery number 319 (part). According to the plaintiff, plaint B and C schedule properties are forming part of plaint A schedule property. Plaintiff claims right over plaint A schedule property on the basis of Ext.A3 deed of exchange dated 24.03.1943. Ext.A3 is the deed of indenture dated 24.03.1943 by which the plaintiff Company obtained ownership and possession of the plaint A schedule property. The second item in the second schedule of Ext.A3 deed pertains to the plaint A schedule property. The old survey number 1213, resurvey number 1214 and the extent of plaint A schedule property are tally with the item No.2 in the second schedule of Ext.A3 deed. So the plaintiff claims title over the plaint A schedule property on the basis of Ext.A3 deed.

22. According to the plaintiff, under a scheme of amalgamation and merger of Malayalam Plantations (P) Ltd. with Harrisons CrossField Ltd. as approved by Honourable High Court of Kerala in CP 13/1983 and also by the Registrar of Companies and company law board, the name of the company was changed to Harrisons' Malayalam Ltd. Ext.A1 is the certified copy of the fresh certificate of incorporation issued by the Registrar of Companies Kerala, which shows that the name of Malayalam Plantations Ltd. was changed to Harrisons Malayalam Ltd. who is the plaintiff in the suit. The suit was filed by one Benchamin Thomas and Ext.A2 certificate issued by the Secretary of the Company shows that he was the group Manager of the estate of the company in Wayanad and he was one of the Principal Officer of the company empowered and authorized to represent the company, to file suit, plaint etc. and thereby he filed this suit. Exts.A1 and A2 were not disputed by the defendants at the time of trial and marked without objections. There is nothing on record to disbelieve Exts.A1 and A2 documents. So the denial of the defendants in the written statement regarding the amalgamation and merger of the Malayalam Plantation Ltd. with Harrison CrossField and the change of the name of the company as Harrison Malayalam Ltd. and regarding the competency of the person who filed the suit representing the plaintiff company cannot be sustained.

23. As the defendants have disputed the identity of the property, an Advocate Commissioner was appointed at the instance of plaintiff. The Advocate Commissioner had inspected the plaint A schedule property with the assistance of Surveyor and as per documents and filed report and survey plan as Exts.C1 and C2.

24. Ext.C1 report shows that, the Advocate Commissioner identified and located the plaint A schedule property and thereby measured plaint B and C schedule properties with the assistance of head Surveyor and with the aid of Meppadi Police, as the defendants obstructed the inspection. It was further reported in Ext.C1 that the plaint A schedule property was identified with the help of Surveyor and FMB and the measurements were rightly tally with the measurement recorded in the FMB. Further, it was reported by the advocate Commissioner that, the plaint A schedule lies in S.No.1214 of Muppainad Village (Presently Vellarimala Village) of Vythiri Taluk. The extent of plaint A schedule property is 129.86 acres. Plaint B schedule is a part and parcel of plaint A schedule property which extents 42.65 acres.

25. As per Exts.C1 and C2 documents, the plaint B schedule property is plot B in Ext.C2 plan and plots C1 and C2 in Ext.C2 plan is the plaint C schedule property. The Commissioner has stated in the report that the plaint C schedule property lies inside the plaint B schedule property and it was an undeveloped area. The extent of plot B, C1 and C2 together is 42.65 acres and plot A is 87.21 acres (87.21+42.65=129.86 acres) as per Exts.C1 and C2. The report and plan further state that the plaint B and C schedule properties are in the possession of defendants. The report further shows that, at the time of inspection, though defendant No.1 stated that he had assigned plaint B schedule properties including C schedule property to his sons that, he has not cared to show the boundaries of the property which he claimed to have assigned to his sons, to him. The commissioner could not see any separate boundary inside the whole plaint B schedule property separating it into pieces.

26. As per Ext.A3 deed, the boundaries of 129.86 acres in R.S No.1214 and 374.98 acres in R.S No.1215/1 which is the item No.1 in the 2nd schedule together are the properties in S.No.1213 and 1169 on the north, the properties in S.No.1216 and 1215/2 on the south, Ernad Taluk boundary on the east and property in S.No. 1225 on the west. As per plaint, the east of plaint A schedule property is D' stones, river and Ernad Taluk boundary, D' stones and the plaintiff's tea area on the west, D' stones and Ernad boundary and river on the south and D' stones on the north. In Ext.C2 plan, plots A, B, C1 and C2 together are 129.86 acres in Re. Sy.1214. As per Ext.C1 report, the eastern & southern boundaries of plaint A schedule property is Aranapuzha-Eranad Taluk, property in old Rs.No.1169 on the north, property in old R.S No.1215 and 1213 on the west. The boundaries on the north and east are tally with the boundaries in Ext.A3 deed. Plaint A schedule property having an extent of 129.86 acres in R.S No.1214. The survey number of southern boundary property is not mentioned as in the Ext.C1 report. Though there is a difference in the Commission Report regarding western boundary, the extent, survey number and other boundaries of the plaint A schedule property are tally with Ext.A3 deed. Moreover, the commissioner has identified the plaint A schedule property as per FMB and with the assistance of head surveyor and reported that the measurement of entire property was tally with FMB. The boundaries of A schedule property mentioned in the plaint is also tally with Ext.C1 and C2 documents. It is to be noted that, no objection was filed by the defendants to Ext.C1 and C2 documents. So it is clear from Ext.C1 report and Ext.C2 plan that the plaint A schedule property in Survey number 1214 is properly identified and located by the commissioner as per FMB as plots A, B, C1 and C2 in Ext.C2 plan. Hence, I find that, the plaint A schedule property is properly identified by the commissioner in this case.

27. As per Ext.C1 and C2, the plaint B schedule property is plot B extending 28.04 acres and plaint C schedule property is plots C1 and C2 extending 6.13 and 8.48 acres respectively. Plot A is extending 87.21 acres of property. The extent of plots A, B, C1 and C2 together is 129.86 acres which tally with Ext.A3 deed and plaint. The commissioner could not see any boundary inside plot B, C1 & C2 to separate plaint C schedule property from plaint B schedule property. So it is clear from Exts.C1 report and C2 plan that the plaint A schedule property is plots A, B, C1 & C2 together. Therefore, it is found that the extent, boundary and survey number of the plaint A schedule property shown in the plaint are correct and plaint B and C schedule properties are the parts of plaint A schedule property. Hence, these issues are found in favour of plaintiff.

28. ***Issue No.1 & Additional issue No.10 & 11:-*** Plaintiff claims title over plaint A schedule property by virtue of Ext.A3 exchange deed dated 24.03.1943. Ext.A3 covers a property extending 129.86 acres in S.No.1214 of the Muppainad Village with boundaries, presently in S.No.319 of the Vellarimala Village. Old Muppainad Village was bifurcated from which Vellarimala Village has its origin. According to the plaintiff, plaint B and C schedule properties are part of plaint A schedule property. This court has already found in earlier issues that the plaint A schedule property was properly identified by the commissioner and also found that the plaint B and C schedule properties are part of plaint A schedule property. The plaintiff alleged that the defendants trespassed into the plaint B schedule property for which recovery of possession has been sought for on the strength of title. It is further alleged that the defendants are attempting to trespass into southern portion of plaint A schedule property, which is scheduled as plaint C schedule item, against which a

decree for perpetual injunction has been sought for or in the alternative recovery of possession has been sought, if the court finds that the plaint C schedule property is in the possession of defendants.

29. To prove the title of plaintiff over plaint A schedule property, plaintiff has marked Exts.A3 to A5 documents. Ext.A3 is the exchange deed dated 24.03.1943 which is the basic title deed of plaint A schedule property. Ext.A3 clearly proved that plaintiff company has obtained 129.86 acres of property in R.S No.1214 of Muppainad Village in the year 1943. Ext.A4 the extract of Adangal which shows that the entire total extent of 129.86 acres in the S.No.1214 belongs in jenmam to the plaintiff company. Ext.A5 is the land revenue receipt of entire plaint A schedule property dated 29.10.1993.

30. The learned counsel for the plaintiff has argued that Exts.A3 to A5 documents proved the title and possession of plaintiff over the plaint A schedule property. The learned counsel has further argued on the basis of the dictum reported in 2003 SAR (Civil) 923, which restate the principle that when the plaintiff proves title to a high degree of probability, the plaintiffs burden must be deemed to be discharged and the burden shifts to the defendants to disprove the same. So according to the learned counsel, the proof adduced by the plaintiff is conclusive and not just to a high decree of probability. So the burden shifts to the defendants to disprove the same. The learned counsel has further argued that the principle on burden of proof is that, if the party proves investiture of title, the burden to prove divestiture of title is upon the party pleading so. The above discussed evidence would shows that the plaintiff has probabalised the case set up in the plaint by marking Exts.A1 to A3 documents and Ext.C1 and C2

documents. Now it is time to analyse the contra evidence if any, adduced by defendants dislodging proof of title adduced by the plaintiff and the case set up by the defendants in written statement and evidence adduced to prove the same.

31. Though Ext.A3 deed was marked without any objection at the time of marking, the learned counsel for the defendants have argued that Ext.A3 is not a tittle deed, its only an indenture which does not confer title to the plaintiff over plaint A schedule property. In ***2018 (2) KHC 719(DB), Harrisons Malayalam Ltd and another Vs State of Kerala and Others***, it is observed that, Indenture is a written agreement and the definition as found in P. Ramanatha Aiyar's Advanced Law Lexicon reads as under:

> *1. A formal written instrument made by two or more parties with different interests, traditionally having the edges serrated, or indented, in a zigzag fashion to reduce the possibility of forgery and to distinguish it from a deed poll.*
>
> *A deed or elaborate contract signed by two or more parties. It is so called because such deeds were formerly cut or torn (intended) into portions, one for each party, to prevent forgery and provide proof of each person's involvement in the transaction indentures were formerly widely used to bind an apprentice to his master for the period of his apprenticeship.*

32. In the present case, Ext.A3 indenture is a registered document through which the conveyance of property was effected from one company to the plaintiff's company. The nature of the transaction can not be decided merely on the terminology employed and the recitals clearly indicate conveyance of immovable properties and the same is also registered. So, this court finds no merit in the argument of the learned counsel for the defendants.

33. The specific case of the defendants is that the 1st defendant purchased 24.50 acers of land as per document No.4282/79 of the Sub Registrar’s Office, Vythiri and adjoining that property, another 34 acres was in the actual possession and enjoyment of him from 1970-71 onwards and he was in actual possession and enjoyment of the said properties and he had assigned some portion of the properties to his wife and children who are the defendants No.2 to 4. Here it is pertinent to note that the document through which defendant No.1 obtained 24.50 acres of property was not produced before the court. If he has produced the said document, it would clearly shows the details of the property such as extent, survey number, boundaries etc., of the property he obtained. Further, they have not produced the document through which defendant No.1 transferred had transferred property to his sons. According to the defendants, they are holding property as R.S No.1165. They have no case that they were having any property in survey number 1214. But Exts.C1 and C2 report shows that the entire plaint schedule property in R.S No.1214 and new survey number of the same is R.S 319 and 320. Here it is pertinent to note that, the written statement of defendants is not clear how the defendant come into possession of an extent of 34 acres as contented. Further, the defendant has not produced the coffee license the coffee account book etc. said to have been obtained by defendant No.1 and the document relating to the

available of loan mortgaging the property in the bank are also not produced by the defendants. Though the defendant is claiming title and possession over the plaint B and C schedule properties, alternatively, contented that the defendants have absolute possession of the properties openly, continuously and uninterruptedly, even adverse to all and thereby they are entitled to possessory title on account of advance possession and limitations.

34. Though the defendants have claimed title over the B and C schedule property specifically by pointing out that the original defendant had purchased the property through a title deed, no such document was produced by the defendant before the court. No explanation was offered for the same. When the original defendant had claimed absolute title over an extent of 24.50 acres of property through a sale deed, in fact, the said defendant cannot claim any possessory title on account of adverse possession and limitation, over such a piece of land. When the defendant has taken a plea of adverse possession and limitation with regard to the said piece of land, it necessarily his unequivocal admission of the title of the plaintiff over such a piece of land.

35. To prove the case of defendants, DW1 and DW2 were examined and Exts.B1 to B10 and Exts.X1 and X2 were marked. Ext.B1 is the basic tax register dated 26.04.2002 which shows that the property having an extent of 17.2398 hectares in R.S No.319/4 and old survey number 1214/pt is in the ownership of defendant No.1. The defendants have no case that defendant No.1 was having any property in S.No.1214. Their specific case is that defendant No.1 was having property in S.No.1165. Ext.B2 is the tax receipt dated 01.06.2009 in the name of defendant No.11 with respect to a property having an

extent of 1.8211 hectares in S.No.319/pt. Exts.B3 and B4 are the land tax receipts are in the name of defendant No.3 dated 27.07.2009 and 28.10.2009 respectively with respect to the property having an extent of 0.5464 hectares and 1.8211 hectares in S.No.319/pt. Exts.B5 and B7 are the building tax receipts, Exts.B9 and B10 are also land tax receipts with respect to the property in R.S No.319/pt in the name of defendants. Here it is pertinent to note that, R.S No.319/pt is one of the new survey numbers of old survey No.1214/pt. The definite case of the defendants is that they were having property in R.S No.1615. They have no case that they were having property in old S.No.1214. Ext.X1 is the true copy of the basic tax register which shows that 17.2398 hectares in R.S No.319A old S.No.1214 is in the ownership of the 1st defendant and 0.022 hectors is in the same survey number is in the ownership of Thottathil Chacko. Ext.X2 is the survey plan of R.S No.319.

36. According to DW1, who is the then Village Officer, resurvey was conducted in Vellarimala Village and it was finalized in 1995 and it was conducted on the basis of possession of property. DW1 has further deposed that as per Ext.X1 document, the ownership and possession of the property in Re.Sy.No.319A is with first defendant and the ownership of the property in Re.Sy.No.319B is with Chacko. Further, he has stated that resurvey was conducted in Vellarimala Village and it was finalised in 1995 and the right of ownership over the land is on the basis of the final resurvey records of 1995. Further, DW1 has stated in cross-examination that as per Ext.A4 document, the name of pattadar of 129.86 acres in R.S No.1214 is of the plaintiff company. He has further stated that as per Ext.A4 document, the ownership of the entire property as per Ext.A4 is in the name of Malayalam Plantation Limited during 1992-93. Further, he has stated that it is out of R.S No.1214 that some portion

was assigned in new Survey No.319, that the outer extremity measurements of the new resurvey No.319, as in Ext.X2 marked through the witness, when looked into with the FMB of R.S No.1214 and Ext.C2 plan, will exactly tally with every stone to stone measurement in R.S No.1214, where the new R.S number braces the outer boundary of R.S No.1214.

37. DW2 was the Head Surveyor of the Wayanad District who assisted the Commissioner to inspect the property. He has stated that as per resurvey records plots B, C1 and C2 in Ext.C2 plan is in the ownership and possession of the 1st defendant and others and the said properties are not in the ownership and possession of the plaintiff company as per records. He has further stated that the resurvey was started in Wayanad District in 1968 to 1970 period and it was conducted based on the possession and enjoyment of the land. It was finalized and notification was published in 1995.

38. It has come out in evidence that the resurvey was conducted in the area where plaint schedule property situates and completed in the year 1995 ie., after filing the suit. The resurvey number of survey number of 1214 is 319. Exts.B1 to B9, Exts.X1 and X2 documents are with respect to a property in resurvey number 319. Those documents are subsequent to the resurvey. The plaintiff and defendant have no contention in the plaint as well as in the written statement that after the resurvey the properties are happened to be in the possession of defendant. No document was produced by defendants to show that they paid land tax for the property in survey number 1214. The evidence shows that resurvey was conducted on the basis of possession over the property and the resurvey was finalized in the year 1995 based on the possession and enjoyment of the land. Here it is pertinent to note that this is a suit for recovery

of property which is admittedly in the possession of defendants even long before resurvey. So, it is clear that as the disputed property has been in the possession and enjoyment of defendants, it was entered in their name in the resurvey records and thereby the defendants became the owner of the property in R.S No.319 as shown in Exts.B1 and X1 documents. DW1 and DW2 have also deposed the same.

39. Here it is pertinent to note that Exts.B1 to B9 documents and Exts.X1 and X2 documents are revenue records. Though the defendant claims title over an extent of 24.50 acres of property through a sale deed, that document was not produced before the court. When the defendants have failed to produce their document of title, it speaks volumes against the claim of the defendants with regard to their title over such 24.50 acres of land as well as there claim for adverse possession and limitation over it.

40. Here it is to be noted that, the defendants claim right over the property merely on the basis of some revenue records and resurvey records. Even before finalizing the resurvey, the plaintiff filed suit for recovery of possession of property. The resurvey was conducted only on the basis of possession and enjoyment. So that would not affect the title of plaintiff over the plaint schedule property.

41. The learned counsel for the plaintiff has argued that the revenue records will not create title over the property on the possession who pays tax on it. It is a settled position and the Honourable Apex court in several judgment has

held that revenue records are not documents of title and does not confer title upon the property, of course at the most, revenue records can be taken as proof regarding the possession over the property as per the revenue records. At any rate, it will not enable the tracing of title on such a person who pays tax over the property. In **Corporation of the *City of Bangalore v. M Papaiah and Another, 1989(3) SCC 612*** where it was held in para 5 that "*it is firmly established that the revenue records are not documents of title, and the question of interpretation of a document not being a document of title is not a question of law".* In ***Union of India and Others V. Vasavi Co-operative Housing Society Ltd and Other AIR 2014 SC 937*** where in it was held by Honourable Court that "This court in several judgment has held that the revenue records does not confer title". ***Corporation of the City of Banglore v Papahi and Another 1989(3) SCC 612*** held that "it is firmly established that revenue records are not documents of title, and the question of interpretation of document not being document of a title is not a question of law". In ***Guru Amrajith Singh v. Rathanchanth and Others AIR 1994 SC 227*** the Honourble Court has held that the entries in Jamabandi are not proof of title. In ***State of Himachal Pradesh v. Kesava Ram and Other AIR 1997 SC 2181,*** *the Honourable* Court held that the entries in the revenue papers, by no stretch of imagination can form the basis for declaration of title in favour of the plaintiff.

42. In the light of the observations made in the above judgments and in the light of the evidence on records, I find that the revenue records and resurvey records would not confer any title to the defendants over the plaint B and C schedule properties. Exts.B1 to B9 documents and Exts.X1 and X2 document would not confer any title to the defendants over the disputed

property. There is no contra evidence before the court to disprove the title of plaintiff over the plaint schedule properties by virtue of Exts.A3 to A5 documents. Hence it can be safely concluded that plaintiff has proved title over the plaint schedule properties. Hence Issue No. 1 and Additional issue No.11are found in favour of plaintiff.

43. Then the next question is whether the title of plaintiff over the plaint B and C schedule properties is lost by the plea of adverse possession and limitation?. The answer is “No”, because of the case set up by the defendants in the written statement. It is to be noted that, when the defendants claimed absolute title over an extent of 24.50 acres of property through a sale deed No.4282/79 of Sub Registrar’s Office, Vythiri, in fact, the said defendant can not claim any possessory on account of adverse possession and limitation, over such a piece of land. Apart from that, there is no clear pleadings with respect to how the defendants came into possession of 34 acres of land. Further the defendant has not pleaded the document number and extent of the property transferred to his sons. The defendants have not even shown the same property to the advocate commissioner at the time of inspection as reported in Ext.C1 report. When the defendants have failed to produce their title documents, it speaks volumes against the claims of the defendants with regard to their title over the disputed property as well as their claim for adverse possession and limitation over it. The inconsistent and contradictory plea of defendant, the absence of sufficient pleadings and evidence would not prove the claim of adverse possession by the defendants. Hence in the light of the above discussed evidence, additional issue No.10 is found against the defendant.

44. The learned counsel for the defendants has argued in the light of Ext.C3 report that, the plaintiff 's property not lies near to the defendants property. So, according to the learned counsel, the plaintiff has no property in the area where the Commissioner who filed Ext.C3 report, conducted inspection. On the other hand, the learned counsel for the plaintiff has argued that the appointment of second commissioner, without seeking to remit the earlier commission report, is wholly illegal and without jurisdiction and can not be relied up on. Reliance placed on the dictum reported in (AIR 1985 Kerala 83). Here it is pertinent to note that the commission happened to be issued in a petition filed by the defendants as IA 1102/15 without remitting or set aside the earlier report. The requirements in the petition are to inspect and identify the plaint schedule property and the property in the possession of defendants by the advocate commissioner with the assistance of surveyor and as per the documents of plaintiff and defendants and as per village records and to report the improvements and its age in the property in possession of defendants. The second commissioner had filed report and plan as Ext.C3 and C4. But on going through Ext.C3 and C4, it is clear that the commissioner has not inspected the property as required in the petition. The properties are not inspected as per the documents of plaintiff and defendant. Though the commissioner has vaguely stated that he has identified the plaint schedule property with the help of FMB and the survey sketch produced by the defendants, he has not even reported the survey number of the property which was inspected by him. Moreover the report is silent as to how he identified the property in the possession of defendants and from where he obtained the details of the property, especially in the circumstance in which the defendant failed to produce the40
ir document before the Court. The survey number and the extent of that property are also not stated in the report. Without inspecting the matters as

stated in the petition, the commissioner has gone beyond the scope of commission. As the matters reported in Ext.C3 are without any basis, the inspection was conducted not as required in the petition and made observation beyond the scope of the commission, I find that Ext.C3 and its annexed plan are to be ignored from the consideration. Hence those documents are ignored and thereby there is no merit in the argument of the learned counsel for the defendants.

45. The learned counsel for the defendant has further argued that the properties in question being private forest the plaintiff cannot claim title over the property on account of section 3(1) of the Private Forest (Vesting and Assignment) Act. Section 3 of the Private Forest (Vesting and Assignment) Act provides that (1) “not withstanding anything contained in any other law for the time being in force or in any contract or other document but subject to the provisions of sub section (2) and (3) with effect on and from the appointed day, the ownership and possession of all private forest in the state of Kerala shall by virtue of this Act, stand transferred to and vested in the Government free from all encumbrances and the right, title and interest of the owner or any other person in any private forest shall stand extinguished”. Ext.A6 is the individual notice of draft statement issued by the Taluk Land Board to the plaintiff company as the owner of the property extending 129.86 acre in survey Number 1214 for hearing with respect to the determination of identity and extent of the said property. In Ext.A6, in page No.3 it is shown that the property extending 129.86 acres in S.No.1214 is private forest. Ext.B10 is the Taluk Land Board Proceeding dated 02.07.1982 in which the properties exempted are shown. The properties in R.S No.1213 are shown in page No.38 of Ext.B10 and in continuation of that the property shown in R.S No.1219 as shown in page No.39

of Ext.B10. The plaint A schedule property is in R.S No.1214. But it is not shown in Ext.B10 document. On the basis of the said documents, the learned counsel for the defendant has argued that the plaint schedule property is a private forest, the learned counsel for the plaintiff has argued that Ext.A6 document is only a draft and not a final decision. The learned counsel has further argued that, though initially the Taulk Board had included the scheduled properties in the list of private forest, the matter was challenged by the plaintiff before the Honourable High Court of Kerala. The Honourable court by setting aside the findings entered by the Taluk Land Board has remitted the mater to the Taluk Land Board for entering findings on certain issues involved. According to the learned counsel for the plaintiff now the matter has been finalized by the Taluk Land Board that the plaint A schedule property is not a private forest. To prove the contentions, the plaintiff has produced and marked Exts.A7, A7(a) and A8 documents before the court. Ext.A7 is the reply received from the State Public Information Officer of Vellarimala Village under the Right to Information Act, which shows that the property in R.S No.319 (which is the new resurvey number of plaint schedule property) in Block No.32 is not a private forest as per the Village records and tax is receiving for the property as per the order of District Collector. Ext.A7(a) is the basic tax register which shows that the property extending 1726.00 hectors in S.No.319 in old S.No.1214 is in the ownership of defendant No.3, which would otherwise proves that the property in sS. No.319 is not a private forest. Ext.A8 is the reply received from State Public Information Officer, who is the Range Forest Officer, of the Range Office, Meppadi Range, under the Right to Information Act which shows that the property in resurvey No.319 of Block No.32 in Vellarimala Village is in the possession of private parties and no private forest is available in the said survey number. So it is clear from Exts.A7 and A8 documents which were issued from

Vellarimala Village Office and Meppadi Range in whose jurisdiction the disputed property situates that, the plaint schedule properties are not private forest as contented by the defendants. At the time of argument, the learned counsel for the defendants objected those documents on the ground that it can be marked only through the officers who had issued it. I don't find any merit in the said objection as those documents were obtained under the Right to Information Act and no objection was raised at the time of marking it. Here it is pertinent to note that defendants could not say that the disputed properties are private forest as the properties are in their possession admittedly and they are remitting tax for the property. Moreover the defendants have no case in the written statement that the subject property is private forest. Moreover, no land revenue will received by the state, if the property were vested forest. The defendants are remitting tax from the period of 2006 onwards as reflected from Exts.B1 to B9 documents. The evidence on record would proves the case of plaintiff than the case of the defendants. Hence, in the light of the above discussed evidence, I find no merit in the argument of the learned counsel for the defendants that the plaint schedule property is a private forest.

46. ***Issue No. 2 to 5 & issue No. 12 :-*** This Court has already found out in earlier issues that the plaint schedule properties are identified and located by the advocate commissioner. Further, the court found that, the plaintiff has proved title over plaint A schedule property and plaint B and C schedule properties are part of plaint A schedule property. The evidence on record and Ext.C1 and C2 documents would prove that the plaint B and C schedule properties are in the possession of defendants. As the plaintiff has failed to prove their exclusive possession over plaint C schedule property, they are not entitled to get injunction, but entitled to get recovery of possession on the strength of

their title document Ext.A3 deed. As the plaintiff has proved their title over plaint A schedule property and plaint B and C schedule properties are part of plaint A schedule property and in the absence of any contra evidence, the plaintiff is entitled to get the recovery of possession of plaint B and C schedule properties from the possession of defendants on the strength of Ext.A3 deed. Hence issue No.2 and 12 are found in favour of plaintiff and issue No.4 & 5 are found against the plaintiff.

47. The plaintiff claims mesne profits of ₹17,625/- per year and ₹400/- per year from plaint B and C schedule properties, from the defendants, from the date of suit till recovery of possession. Here it is pertinent to note that there is absolutely no pleadings in the plaint with respect to the income from plaint B and C schedule properties. The plaint is also silent as to the improvements, cultivations etc. in the property. The plaint is further silent as to the basis of assessment of mesne profits claimed in the plaint. It is clear from the plaint itself that the plaint C schedule property is a undeveloped land and no improvements in it. So, in the absence of pleadings and evidence on mesne profits, the plaintiff is not entitled to get the said relief in the plaint. Hence issue No.3 is found against plaintiff.

48. On analysing the overall evidence on record, I find that the plaintiff has proved the case by producing sufficient documents. The plaintiff company has proved that they are the title holder of the plaint A schedule property as per Ext.A3 document and the plaint B and C schedule properties are part of plaint A schedule property. As plaint B and C schedule properties are in the possession of defendants and they failed to prove the case set out in the written statement, the

plaintiff is entitled to recover the same. Hence, the suit is decreed in part with costs.

49. ***<u>Issue No.6:-</u>*** In the light of the findings on issue No.1 to 5 and Additional issue No.7 to 12, the suit is decreed in part with costs.

In the result, the suit is decreed in part with costs as follows:

1 The defendants are directed to surrender the possession of plaint B and C schedule property to the plaintiff, within 2 months from the date of judgment. If the defendants failed to do so, the plaintiff is entitled to recover the same from the defendants through the process of court.

2. The relief of injunction and future mesne profit are dismissed.

3. The defendants shall pay the costs of the suit to the plaintiff.

(Dictated to the Confidential Assistant, transcribed and typed by her, corrected and pronounced by me in open court, this the 30th day of September, 2024.)

SUB JUDGE

<u>Appendix</u>:-

<u>Plaintiff's Witness:</u> - Nil.

Plaintiff's Exhibits:

A1	-	29.10.1984	-	Certified copy of fresh certificate of incorporation consequent on change of name issued by the Registrar of Companies, Kerala.
A2	-	28.12.2005	-	Certificate of rectification regarding authorisation of Sri.M.K.Benchamin Thomas for filing the suit.
A3	-	24.03.1943	-	Deed of indenture exchange No.1678/43.
A4	-	02.09.1992	-	Certified copy of Adangal extract.
A5	-	29.10.1993	-	Land Tax receipt of Vellarimala Village.
A6	-	06.10.1977	-	Statutory notice issued by Taluk Land Board in Ceiling Case No.1776/73.
A7	-	02.03.2015	-	Reply received from the State Public Information Officer of Vellarimala Village under Right to Information Act.
A7(a)	-	02.03.2015	-	Basic Tax Register.
A8	-	13.01.2020	-	Reply received from the State Information Officer of Forest Range Officer under Right to Information Act.

Defendants' Witness:

DW1	-	10.12.2009	-	N.T.Mathew.
DW2	-	22.12.2009	-	V.K.Swamikutty.

Defendants' Exhibits:

B1	-	26.04.2002	-	Certified copy of Basic Tax Register.
B2	-	01.06.2009	-	Land Tax Receipt.
B3	-	27.07.2009	-	Land Tax Receipt.

B4	-	28.10.2009	-	Land Tax Receipt.
B5	-	08.12.2009	-	Plan.
B6	-	05.02.1996	-	Building Tax Receipt.
B7	-	27.04.2009	-	Building Tax Receipt.
B8	-	09.12.2009	-	Land Tax Receipt.
B9	-	21.03.1996	-	Land Tax Receipt.
B10	-	02.07.1982	-	T.L.H. No.37 of 1981 of Taluk Land Board Vythiri.

Court Witness: - Nil.

Court Exhibits:

C1	-	06.10.2004	-	Commission Report.
C2	-	14.05.2004	-	Plan.
C3	-	24.06.2019	-	Commission Report.
C4	-	24.06.2019	-	Plan.

Third Party Witness: Nil.

Third Party Exhibits:

X1	-	-	-	Copy of Basic Tax Register.
X2	-	09.12.2009	-	Copy of Survey Field Plan.

SUB JUDGE

Typed by : Preethi P.B.
Compared by : Geetha V.

Fair Judgment in OS 95/94
Dated 30.09.2024