

In the Court of the Principal Munsiff, Nedumangad
Present:- Smt. S.R. Parvathi, LLM, Principal Munsiff
Friday 18th November 2016/27th Karthika 1938

OS.NO.387/2012

Plaintiffs:-

1. Viswambharan,
S/o.Gangadharan,
Aged 66 Years,
Muthalattu Pallithara Kadayil Veedu,
Kalathukal, karakulam.P.O.
2. G.Sadanandan,
Aged 64 Years,
S/o.Gangadharan,
of -do- -do-
3. Sarojini,
D/o.Rajamma & Gangadharan,
Aged 60 Years of -do- -do-
4. Sreemathi,
Aged 58 Years,
D/o.Rajamma & Gangadharan
Muthalattu Pallithara Kadayil Veedu,
Kalathukal, karakulam.P.O.
Kalathukal, karakulam.P.O.
5. Sudha,
D/o.Rajamma & Gangadharan,
Aged 55 Years
Muthalattu Pallithara Kadayil Veedu,
Kalathukal,-do- -do-
6. Sathyeyndran,
Aged 45 Years,
S/o.Late Gangadharan & Rajamma,
Muthalattu Pallithara kadayil Veedu,
Kalathukal, karakulam.P.O.

7. Girija,
Aged 53 Years,
D/o.Late Rajamma & Gangadharan,
Muthalattu Pallithara kadayil Veedu,
Kalathukal, Karakulam.P.O.
8. Vijaya Kumari,
Aged 38 Years,
D/o.Late Rajamma & Gangadharan,
Muthalattu Pallithara Kadayil Veedu,
Kalathukal, Karakulam.P.O.

(By Adv.:- Sri.Neyyattinkkara N.Mohanachandran)

Defendants:-

1. State Represented by Its Principal Secretary/
Chief Secretary to Govt. Secretariate,
Thiruvananthapuram.
2. Executive Engineer,
Sunflag Nylon Co.
Sponsored by KSIDC,
Near Raj Bhavan,
Vellayambalam,
Thiruvananthapuram.
3. Chairman and Managing Director,
KSIDC, Vellayambalam,
Kowdiyar.P.O,
Thiruvananthapuram.
4. Arjunan Pillai,
Rtd. Executive Director,
KSIDC, TC.20/364,
Resmi, Sreevilas Lane,
Kowdiyar.P.O,
Thiruvananthapuram.

5. Sunflag Nylon Co.Ltd.,
Having Registered Office at Keston Road,
KSIDC Building, Kowdiyar.P.O,
Represented by Its Managing Director.
6. P.K.V.Panicker,
Surabhi,
GreenValley Building,
Room.No.728,
Our Towers,Vellayambalam,
Sasthamangalam Road.
Now Residing at Green Valley Building,
TC.14/893, Sabitha,
Near St.Thomas Play School,
Chennilode, Kadakampally Village,
Medical College.P.O,
Thiruvananthapuram-11
7. The Secretary,
Kerala State Industries Department,
'J' Section, Secretariat,
Thiruvananthapuram.
8. The District Collector
Kudappanakunnu,
Thiruvananthapuram.
9. The Secretary,
Public Works Department,
Secretariat,
Thiruvananthapuram.
10. Revenue Secretary (Prl.)
Secretariat,
Thiruvananthapuram.
11. Balakrishnan,I.A.S,
Industries Department (Rtd.),
Residing at Flat No.9C.SFS,
Kings Wood, Behind TTC,
Kowdiyar, Thiruvananthapuram.

12. The Under Secretary,
Industries(J) Department,
Secretariat,
Thiruvananthapuram.
13. Land Revenue Commissioner,
Opposite Museum Public Offices,
Vikas Bhavan.P.O,
Thiruvananthapuram.
14. The Tahsildar,
Nedumangad.
15. The Village Officer,
Aruvikkara Village,
Thiruvananthapuram.
16. Chandran,
Kalladichankuzhy,
Near G.V.Raja Sports School,
Cheriyakonni, Karakulam.P.O,
Thiruvananthapuram.
17. Syamala,
Kuzhivilakathu Veedu,
Moozhi,Cheriyakonni,
karakulam P.O,
Near G.V.Raja Sports School,
Thiruvananthapuram.
18. Secretary,
Aruvikkara Grama Panchayath,
Aruvikkara.P.O,
Karakulam, Thiruvananthapuram.
19. Chairman and Managing Director,
KINFRA Infrastructure,
Sasthamangalam.P.O,
Thiruvananthapuram.

20. Thankamony,
W/o.PKV Panicker,
Greenvalley Building,
TC.14/893,
Sabitha, Near St.Thomas Play School
Chennilode, Kadakampalli village,
Medical College.P.O,
Thiruvananthapuram.
21. Sadasivan (Sugathan)
Son-in-law of Kannettu Chellappan,
Kadayara Puthen Veedu,
Cheriyakonni,
Thiruvananthapuram.

**(By Advs.: -Sri.Smt.N.Padmini, Manju Prasad, D.Muraleedharan,
K.Uvaiskhan and A.Mohammed Iqbal)**

This suit coming on for final hearing on 08.11.2016 and the court on 18.11.2016 delivered the following.

JUDGMENT

The suit is for permanent prohibitory injunction.

2. The plaint averments in brief are as follows;

The plaint schedule property was originally belonged to deceased Madhavan Kunju, the father of deceased Gangadharan obtained by him as his share in an oral partition. He had executed a deed of otty and kuzhikkanom in favour of one Kali Parvathi and Velayudhan Krishnan as per document No. 3751/1107 ME in the year 1122 ME. They executed a release deed of otti kuzhikkanom right in favour of late Gangadharan as per document No. 691/1122

ME. After the execution of release deed Gangadharan had been in absolute right, possession and enjoyment of the schedule property. Gangadharan and his wife Rajamma were expired. After the death of Gangadharan and Rajamma the plaintiffs who are the children of late Rajamma and Gangadharan became absolute owners in possession and enjoyment of the schedule property. The 2nd defendant and his agents and employees harassed Gangadharan to execute a sale deed in their favour which was refused by Gangadharan. On 10/1/1985 the 2nd defendant with his agents tried to trespass into the plaint schedule property and the said attempt was thwarted by late Gangadharan. Thereafter Gangadharan filed OS.15/1985 before the 2nd Additional Sub Court, Thiruvananthapuram and the Hon'ble Court dismissed the suit solely on the ground that the 2nd plaintiff has not taken any steps to identify the plaint schedule property. The appeal and the 2nd appeal against the said decision were dismissed for default. The plaintiffs are in absolute possession, enjoyment and ownership of the plaint schedule property. The defendants have no manner or right or possession over the plaint schedule property. On 03/08/2009 the defendants repeated their illegal acts and the 8th plaintiff filed OS 691/2009 before the Munsiff's Court on 28/03/2012 and on 16/04/2012 the defendants repeated their illegal acts. The 4th

defendant sold portion of plaint schedule properties to Sri.P. K. V. Panicker and his wife. OS 691/2009 was dismissed for default. The defendants are to be restrained from trespassing into the plaint schedule property and from taking possession of the same forcibly and from committing waste therein. Hence this suit.

3. The defendants 2 to 5 in their written statement contended that Sri. Gangadharan had instituted a suit as OS 15/1985 in respect of the plaint schedule property and the same was dismissed on 20/01/1988 finding that the plaintiffs father Gangadharan had no title or possession over the plaint schedule property. The appeal against the said decree and judgment in AS 306/1988 was dismissed confirming the decree of Hon'ble Sub Court. The 2nd appeal before the Hon'ble High Court as SA 508/1995 also dismissed. Thus the decree in OS 15/1985 became final and conclusive between the parties and the present suit is barred by resjudicata.

4. Other defendants also filed written statement.

5. Based on the above contentions the preliminary issue raised as follows:

Is the suit barred by principles of resjudicata?

6. The copy of judgment in OS 15/1985 of the Hon'ble Sub Court, Thiruvananthapuram is marked as Ext. A1, the copy of judgment in AS 306/1988 is marked as Ext. A2. Attested copy of judgment in SA 508/1995 of the Hon'ble High Court of Kerala is marked as Ext. A3 for the purpose of reference.

7. Heard both sides.

8. **Preliminary issue:--** The plaintiffs filed IA 4529/16 contending that the earlier cases were dismissed for default. The lower court and the appellate court have not gone into the merit of the case and hence there is no question of resjudicata and the preliminary issue is found in favour of the plaintiffs. From the Ext. A1 ie, the judgment of the trial court in OS 15/85 it is clear that the schedule property in that was 54¼ cents of land in old survey No. 5124 of Perumkulam village and the suit was filed by Gangadharan against Sun Flag Nylon Limited represented by its managing director, who is the 5th defendant in the instant case. From the plaint schedule description in the instant case it is clear that the plaint schedule properties in both the cases are same. From the Ext. A1 judgment it is clear that the said suit is filed by Gangadharan, the father of the plaintiffs herein with the same

averments that in the present suit and OS 15/1985 was filed for declaration of title of Sri. Gangadharan over the plaint schedule property and decree for permanent prohibitory injunction against the defendant in that case. The trial court has found that the Exts. A1 to A3 are not the conclusive proof of title to the plaint schedule property in favour of the plaintiff in that case. Ext. A1 is the otti kuzhikanam deed executed by Ummini in favour of Kali Parvathi and Velayudhan Krishnan. Ext. A2 is the release deed executed by them in favour of Gangadharan in the year 1122 ME. Ext. A3 is the receipt of payment of tax. From the averments in the plaint in the instant case it is clear that the plaintiffs herein are relying on the same documents and they are claiming title of the plaint schedule property under their deceased father Gangadharan. In Ext. A1 it is also found that the evidence in the case is not capable of proving the title and possession of the plaintiff Sri. Gangadharan over the plaint schedule property. More over the description in the property of the plaintiff is not capable of identification. Therefore the trial court has found that the plaintiff is not entitled to get a declaration and injunction as prayed for. Ext. A1 shows that the trial court has decided the case on merits after taking evidence and hearing the parties. The subject matter in the present suit and in OS 15/1985 is

the same. The matter in issue directly and substantially in issue, ie, the title and possession of the plaintiffs over the plaint schedule property is the same in the present case and in OS 15/1985. The other defendants herein are claiming under the 5th defendant ie, Sun Flag Nylon Company Limited who was the defendant in OS 15/1985. In the written statement of defendants 2 to 5 it is stated that KSIDC has entered into an agreement with Sun Flag Nylon Company Limited to set up a project for manufacture of nylon. The 1st defendant is the State of Kerala and the other defendants are various officers of Sun Flag Nylon Company Limited and KSIDC. The 6th defendant is allegedly a subsequent purchaser of a portion of the plaint schedule property. Thus it is clear that all the defendants in the instant case are claiming right under the defendant in OS 15/1985. Ext. A2 judgment in AS 306/1988 shows that the 1st appeal against the judgment and decree in OS 15/1985 is dismissed on merits. Ext. A3 order of Hon'ble High Court in SA 508/1995 shows that the 2nd appeal is also dismissed. Hence the decision in OS 15/1985 has attained finality. Thus the matter directly and substantially in issue in the present suit has already been heard and finally decided between the same parties by a competent court. Therefore the present suit is barred by principles

of resjudicata. The preliminary issue is found against the plaintiffs.

In the result, suit is dismissed with costs.

Dictated to the C.A, transcribed by her corrected by me and pronounced in open court on 18th day of November, 2016.

**S. R. PARVATHI,
PRINCIPAL MUNSIFF**

Appendix:-

Exhibits Marked for the Plaintiff:-

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| A1 | Copy of Judgment in OS.15/1985
Hon'ble Sub Court, Thiruvananthapuram. |
| A2 | Copy of Judgment in AS.306/88
Hon'ble I Addl.District Court,
Thiruvananthapuram. |
| A3 | Copy of Judgment in SA.508/1995 Hon'ble
High Court of Kerala. |

Exhibits Marked for the Defendants:- Nil

Court Exhibits :- Nil

Witnesses for Both Sides Plaintiff:- Nil

// True Copy//

Typed by : TBT

Compared by:

PRINCIPAL MUNSIFF.

Judgment in
OS No. 387/2012
Dt: 18/11/2016.

