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C.A.No. 2311 OF 1999
ITEM NO.103

COURT NO.6

SECTION XIA

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

CIVIL APPEAL NO. 2311 OF 1999

STATE OF KERALA & ANR. APPELLANT (S)

VERSUS

MOHAMMED KUNHI & ORS. RESPONDENT(S)
(With office report)

Date: 24/08/2004 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SHIVARAJ V. PATIL
HON'BLE MR. JUSTICE B.N. SRIKRISHNA

For Appellant(s)Mr. Ramesh Babu M.R., Adv.

For Respondent(s)Mr. K.K. Venugopal, Sr.Adv.
Mr. P. Krishnamoorthy, Sr.Adv.
Mr. Fazlin Anam, Adv.
Mr. E.M.S. Anam,Adv.
Mr. Gopal Sankaranarayanan, Adv.

UPON hearing counsel the Court made the following
O R D E R

Mr. Ramesh Babu M.R., learned counsel for the appellants made his submissions from 11.00 a.m. to 11.40 a.m. Thereafter, Mr. K.K. Venugopal, learned Senior counsel for the respondents commenced his arguments and concluded at 12.00 a.m. The appeal is allowed with no costs in terms of the signed order.

Sarita (Madhu Saxena)
Court Master

(Signed order is placed on the file)

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2311 OF 1999

STATE OF KERALA & ANR. ... APPELLANTS
VERSUS

MOHAMMED KUNHI (D) BY LRS. & ORS. ... RESPONDENTS

O R D E R

The State of Kerala is in appeal questioning the validity and correctness of the impugned judgment passed by the High Court in the second appeal. The plaintiff filed the suit for declaration of title over the plaint-B schedule property and for consequential relief of injunction against the State on the basis that she had perfected her title over the suit property by adverse possession. The trial court, after a full dressed trial on appreciation of evidence, recorded findings against the plaintiff and concluded that she failed to establish that she had perfected her title by adverse possession over the property in question. In that view, the suit

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was dismissed. The first appeal filed by the plaintiff was also dismissed by the First Appellate Court by a well-considered and elaborate order after reappraisal of documentary as well as oral evidence. The First Appellate Court concurred with the findings recorded by the trial court and held that the plaintiff had not succeeded in establishing the plea that she or her husband had been in possession of the property peacefully, uninterruptedly and adversely against the defendants for the last more than 30 years. The second appeal filed by the plaintiff had been admitted on the following substantial question of law :

"Whether the plea of adverse possession put forward by the appellant is in any way affected by the production and proof of Exts. A2 to A4? arises for consideration."

From the perusal of the impugned judgment, it is clear that the High Court in a way has reappraised the evidence on record and reversed the the concurrent findings recorded by the two courts below going beyond the scope of Section 100 of the Code of Civil Procedure. The learned counsel for the appellants strongly contended that the so called substantial question of law

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on which the High Court admitted the second appeal, was not at all a substantial question of law; it is one which relates to appreciation of evidence, in particular, as regards documents - Exhibits A2 to A4. Learned counsel added that the two courts below, on proper appreciation of evidence, taking note of the fact that there was no mention in the plaint about the possession of the plaintiff over the suit property by giving on lease as per Exhibits A2 to A4; the two courts below also did not accept Exhibits A2 to A4 by doubting their genuineness, considering the fact that neither there was a mention of these Exhibits in the plaint nor they were produced before the court along with the plaint; the suit was filed in the year 1980 and those documents were filed only in the year 1984. The learned counsel also stated that the proceedings were taken against the son of the plaintiff in the year 1979 to remove the encroachment.

Pursuant to those proceedings, possession of the property in question was taken on 15.1.1980 and the suit was filed on 19.1.1980. Under the circumstances, according to him, the impugned judgment cannot be sustained and the High Court has committed an error in upsetting the concurrent findings of fact recorded by two courts below.

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Per contra, the learned senior counsel for the respondents made submissions supporting the impugned judgment of the High Court. He pointed out that the respondents had been using the plaint-B schedule property in approaching the National Highway since the beginning.

Having considered the submissions made by the learned counsel for the parties and looking to the reasons recorded by the trial court as well as the First Appellate Court, we have no hesitation in holding that the High Court committed an error in reversing the concurrent findings of fact recorded by the two courts below by reappreciating the evidence placed on record.

In fact, no substantial question of law did arise for consideration before the High Court. The substantial question of law formulated by the High Court at the time of admitting the appeal, in our view, again touches the appreciation of evidence in relation to Exhibits A2 to A4. We do not think it necessary to record detailed reasons again as we agree with the reasons recorded by the First Appellate Court in rejecting the case of the plaintiff having regard to Exhibits A2 to A4 and the other documentary and oral evidence. Hence, the appeal is allowed. The impugned judgment is set aside. No costs.

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The learned senior counsel for the respondents states that the respondents may approach the State Government to seek some portion of land to use it as a way to have access to the National Highway. It is open to the respondents to do so and the State Government may, entirely in its discretion on its terms, consider it if permissible in law, but, without affecting any public purpose and in case the respondents have no other access.

.....J.
[SHIVARAJ V. PATIL]

.....J.
New Delhi, [B.N. SRIKRISHNA]
August 24, 2004.