

SUPREME COURT OF INDIA

K. Kuttan Pillai

Vs.

S. Vijayankutty Nair

(M Rao and R Sethi JJ.)

10.12.1999

ORDER

M. JAGANNADHA RAO, J.

1. Special leave granted.
2. This is an appeal filed by the defendant against the judgment and decree of the High Court of Kerala rendered on 1.4.1998 in Second Appeal No. 313 of 1990.
3. The suit was filed by the respondents for a declaration of easementary right of prescription over an east west width of ten feet on the eastern portion of the appellant's property on the south, describing it as the 'C Schedule property. The suit was decreed in favour of the plaintiffs by granting a decree over a part of a width of 7.5 feet in the 'C Schedule property.
4. An appeal was preferred by the defendant before the first appellate court for grant of easement in excess of a width of 7.5 feet but no appeal was preferred by the plaintiffs. The appellate court reversed the decree of the trial court and dismissed the suit. Thereafter, the plaintiff filed the Second Appeal in the High Court and the Second Appeal was decreed. The decree in Second Appeal was not confined to 7.5 ft. but was extended up to 10 ft.
5. In this appeal preferred by the defendant, it is submitted that even if the High Court wanted to reverse the decree of the first appellate court, it could not have decreed the suit to any extent beyond 7.5 ft. width as decreed by the trial court, inasmuch as the plaintiff had not filed any appeal to the first appellate court nor filed any cross objections in the first appellate court.

6. After hearing counsel on both sides, we are of the view that this contention of the appellant-defendant is liable to be accepted. The High Court could not have given a relief to the plaintiff which was not the subject matter of the judgment of the first appellate court. For the aforesaid reasons, the decree passed by the High Court is modified by confining the easementary right to a width of 7.5 ft. as held by the trial court. The judgment of the trial court is restored. The appeal is allowed to the above extent. There shall be no order as to costs.