

Shaji Vs. David

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Court : Kerala

Decided On : Jan-16-2013

Judge : Honourable Mr.Justice Thomas P.Joseph

Appellant : Shaji

Respondent : David

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE THOMAS P.JOSEPH WEDNESDAY, THE 16TH DAY OF JANUARY 2013 26TH POUSHA 193 OP(C).NO. 212 OF 201.(O) ----- O.S. NO.765 OF 2010.PRINCIPAL MUNSIF'S COURT, NEYYATTINKARA PETITIONER(S): ----- SHAJI AGED 3 YEARS S/O.THANKAMONY,'KEDARAM' ,KARIKKATHUKUZHY THALAMANNOOR DESOM,PERUMKADUVILA VILLAGE. BY ADV. SRI.G.SUDHEER RESPONDENT(S): ----- 1. DAVID S/O.CHELLAYYAN NADAR,AGED 6 YEARS,D.L.SADANAM MANALIVILA,MARAYAMUTTOM DESOM,PERUMKADAVILA VILLAGE.

2. LEELA D/O.THANKAMMA,D.C.SADANAM,MANALIVILA MARAYAMUTTOM DESOM,PERUMKADAVILA VILLAGE.

3. JOSE S/O.DAVID,D.C.SADANAM,MANALIVILA MARAYAMUTTOM DESOM,PERUMKADAVILA VILLAGE.

4. SALEELA D/O.CHELLAMMA,PANANGALAVILA VEEDU,MANALIVILA MARAYAMUTTOM DESOM,PERUMKADAVILA VILLAGE.
5. SOMAN S/O.CHELLAYYAN NADAR,PANANGALAVILA VEEDU,MANALIVILA MARAYAMUTTOM DESOM,PERUMKADAVILA VILLAGE. O.P(C) NO.212 OF 201.6. RUSSEL, AGED 6 YEARS S/O.JAMES NADAR,PANANGALAVILA VEEDU,MANALIVILA MARAYAMUTTOM DESOM,PERUMKADAVILA VILLAGE.
7. THANKA BAI, AGED 4 YEARS D/O.RAJAMMA,PANANGALAVILA VEEDU,MANALIVILA MARAYAMUTTOM DESOM,PERUMKADAVILA VILLAGE.
8. BINU, AGED 3 YEARS S/O.SOMAN,PANANGALAVILA VEEDU,MANALIVILA MARAYAMUTTOM DESOM,PERUMKADAVILA VILLAGE.
9. VENESH S/O.DASAN,PALLINADA VEEDU,MANALIVILA MARAYAMUTTOM DESOM,PERUMKADAVILA VILLAGE.
10. SASIKUMAR S/O.THANKAYYAN NADAR,ROADARIKATHU PUTHEN VEEDU MANALIVILA,MARAYAMUTTOM DESOM,PERUMKADAVILA VILLAGE.
11. CHELLAYYAN NADAR DASSAYYA PUNAKODU ROADARIKATHU VEEDU,MANALIVILA MARAYAMUTTOM DESOM,PERUMKADAVILA VILLAGE. THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 16-01-2013, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: O.P(C) NO.212 OF 201.APPENDIX PETITIONER(S)' EXHIBITS: EXHIBIT P1: TRUE COPY OF THE AMENDED PLAINT OS 765/2010 FILED BY THE RESPONDENTS 1 amp; 2 BEFORE THE PRINCIPAL MUNSIFF COURT, NEYYATTINKARA DT.25-7-2010. EXHIBIT P2: TRUE COPY OF THE WRITTEN STATEMENT WITH COUNTER CLAIM FILED BY THE PETITIONER IN OS 765/2010 BEFORE THE PRINCIPAL MUNSIFF COURT, NEYYATTINKARA DT.26-10-2010. EXHIBIT P3: TRUE COPY OF THE REPLICATION FILED BY THE RESPONDENTS IN OS 765/2010 BEFORE THE PRINCIPAL MUNSIFF COURT, NEYYATTINKARA DT.12- 11- 2010. EXHIBIT P4: TRUE COPY OF THE IA 3704/2012 IN OS 765/2010 FILED BY THE R1 AND 2 BEFORE THE PRINCIPAL MUNSIFF COURT, NEYYATTINKARA DT.9-7-2012. EXHIBIT P5: TRUE COPY OF THE OBJECTION

FILED BY THE PETITIONER AGAINST THE AMENDMENT APPLICATION FILED BY R1 & 2 IN OS 765/2010 BEFORE THE PRINCIPAL MUNSIF COURT, NEYYATTINKARA DT.10-9-2012. EXHIBIT P6: TRUE COPY OF THE ORDER IN IA 3704/2012 IN OS 765/2010 DT.15- 12-2012 OF THE PRINCIPAL MUNSIF, NEYYATTINKARA. RESPONDENT(S)' EXHIBITS: NIL TRUE COPY THOMAS P.JOSEPH, J.

===== O.P(C) No.212 of 2013
===== Dated this the 16th day of
January, 2013

JUDGMENT

The 1st defendant in O.S. No.765 of 2010 of the principal Munsiff's Court, Neyyattinkara is aggrieved by Ext.P6, order on Ext.P4, application - I.A. No.3704 of 2012 filed by the 1st respondent seeking amendment of the plaint.

2. Respondents 1 and 2 filed the suit for a decree for prohibitory injunction against the petitioner and others constructing a compound wall, etc., reducing width of the plaint C schedule way altering its present lie and condition or removing the slabs over it. The petitioner filed Ext.P2, written statement with a counter claim seeking a declaration of his title and possession claimed over the counter claim schedule property, for fixation of boundary and for prohibitory injunction. Respondents 1 and 2 filed Ext.P3, replication. While so, respondents 1 and 2 filed Ext.P4, application seeking amendment of the plaint. The petitioner filed Ext.P5, objection. The application was allowed by Ext.P6, order. O.P(C) No.212 of 2013 :-

2. :- 3. It is contended by the learned counsel that if the amendment is allowed, it will take away certain admissions respondents 1 and 2 have made in the plaint. If these admissions are allowed to be withdrawn, it will prejudice the petitioner and other defendants. It is also contended that it is not stated that where exactly the first prayer made in the amendment petition is to be incorporated.

4. The so called admission in the plaint stated by the petitioner is as to right over the plaint C schedule. But that statement in the plaint is not admitted by the petitioner and other defendants. Hence that statement in the plaint cannot be said

to be an admission. From Ext.P4, order and the application what I can understand is that respondents 1 and 2 wanted, mainly amendment of description of the property. That would not in any way alter the nature and character of the suit or cause prejudice to the petitioner.

5. If where exactly in the plaint relief No.1 in Ext.P4, application is to be inserted is not mentioned, that is a matter which the court below is to look into. O.P(C) No.212 of 2013 -:

3. :- 6. In the circumstances I do not find reason to interfere with the impugned order. The Original Petition is dismissed. THOMAS P. JOSEPH, JUDGE. vsv

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