

Kali Vs. Pathumma

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Court : Kerala

Decided On : Jan-04-2013

Judge : Honourable Mr.Justice N.K.Balakrishnan

Appellant : Kali

Respondent : Pathumma

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE N.K.BALAKRISHNAN FRIDAY, THE 4TH DAY OF JANUARY 2013 14TH POUSHA 193 RSA.No. 1467 of 2012 () ----- AS.77/2006 of SUB COURT, OTTAPPALAM OS.121/2004 of MUNSIFF COURT, OTTAPPALAM APPELLANTS/APPELLANTS/APPELLANTS/DEFENDANTS 2 & 3: ----- 1. KALI,AGED 6 YEARS, W/O. OF MOOCHIKKATTIL DECEASED SANKARAN, ELAMBULASSERY AMSOM AND DESOM, OTTAPALAM TALUK.

2. MANIYAN, AGED 3 YEARS, SON OF 1ST APPELLANT ELAMBULASSERY AMSOM AND DESOM, OTTAPALAM TALUK. BY ADVS.SRI.G.SREEKUMAR (CHELUR) SRI.K.RAVI (PARIYARATH) RESPONDENTS/RESPONDENTS/PLAINTIFFS: ----- 1. PATHUMMA,AGED 5 YEARS D/O.MOOCHIKKATTIL DECEASED CHATHIRE ELAMBULASSERY AMSOM AND DESOM OTTAPALAM TALUK,ELAMBULASSERY P.O.

756.

2. KUNHUMMA, AGED 5 YEARS, D/O.MOOCHIKKATTIL DECEASED CHATHIRE ELAMBULASSERY AMSOM AND DESOM, OTTAPALAM TALUK ELAMBULASSERY P.O.678 756. R1 &R2 BY ADV. SRI.P.JAYARAM THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 04.01-2013, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: RKC N.K. BALAKRISHNAN, J.

----- R.S.A. No:

1467. of 2012 ----- Dated this the 4th day of January, 2013

JUDGMENT

Defendants 2 and 3 in a suit for partition have filed this second appeal against the decree for partition concurrently passed by the courts below.

2. According to the plaintiffs the plaint schedule property were taken on oral lease by Chathira, who is the father of the plaintiffs and 1st defendant. That lease was stated to have been taken from one Ramakrishna Guptan. According to the plaintiffs, on the death of Chathira in 1977, the plaint schedule property devolved upon the plaintiffs and 1st defendant. Hence, the plaintiffs sought for partition of the property. The courts below passed a preliminary decree as per which the plaintiffs were allotted 2/3 share in the plaint schedule property.

3. The 1st defendant died during the pendency of the suit. Defendants 2 and 3 are his legal heirs. It was R.S.A. No:1467/2012 -2- contended that the plaint schedule property was obtained on an oral lease by the 1st defendant about 60 years back. The courts below found that at the time when the oral lease was allegedly obtained, the 1st defendant was aged less than 14 years and so it was not at all possible or probable to obtain oral lease as pleaded by him.

4. The learned counsel for the appellants, who are the legal heirs of the 1st defendant, vehemently argued that the plaintiffs did not adduce any satisfactory evidence to prove the oral lease set up by Chathira, the father of the 1st

defendant. Kali, the wife of the 1st defendant was examined to prove the alleged oral lease. She had no direct knowledge regarding the oral lease. The evidence would show that Chathira and his children were residing in the very same house situated in the plaint schedule property. DW1 had no direct knowledge regarding the lease set up by D1. No other evidence was adduced by the defendants in R.S.A. No:1467/2012 -3- support of the oral lease pleaded by D1. Hence, the courts below entered a finding against the defendants. That finding is entered on legal evidence. Since Chathira and his children were residing together in the house situated in the plaint schedule property, the courts below found that it is more probable and acceptable that the plaint schedule property was obtained by oral lease by Chathira, the father of the 1st defendant.

5. I find no illegality or perversity in the findings so entered by the courts below. No question of law is involved in the matter. As such this appeal is only to be dismissed. In the result this second appeal is dismissed in limine. Sd/- N.K. BALAKRISHNAN, JUDGE //True Copy// P.A. to Judge jjj

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