

Beefathimma Vs. Nil

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Court : Kerala

Decided On : Jan-15-2013

Judge : Honourable Mr.Justice Pius C.Kuriakose

Appellant : Beefathimma

Respondent : Nil

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE PIUS C.KURIAKOSE & THE HON'BLE MR. JUSTICE BABU MATHEW P.JOSEPH TUESDAY, THE 15TH DAY OF JANUARY 2013 25TH POUSHA 193 MFA.No. 176 of 2012 ----- AGAINST THE JUDGMENT IN OP.30/2012 (G&W) ----- APPELLANT/PETITIONERS: ----- 1. BEEFATHIMMA AGED 4 YEARS.

2. KHADEEJATH SANA M.K AGED 1 YEARS.

3. MARIYAM SANIYA M.K. AGED 5 YEARS.

4. RABIYATH SHAZMA M.K AGED 3 YEARS.

5. AYSHA AGED 7 YEARS. (THE PETITIONERS NO. 2 TO 4 ARE MINORS REPRESENTED BY THEIR NEXT FRIEND GUARDIAN MOTHER IST PETITIONER) IST PETITIONER IS THE WIFE OF LATE S.M. ABDUL KAREEM. HOUSE WIFE RESIDING AT SAPNA RESIDENCE,ARAFA ROAD KASARAGOD

VILLAGE KASARAGOD TALUK AND DISTRICT. THE PETITIONERS 2 TO 4 ARE MINOR CHILDREN OF THE 1ST PETITIONER AND LATE S.M. ABDUL KAREEM RESIDING ALONG WITH 1ST PETITIONER AT ABOVE GIVEN ADDRESS THE PETITIONER NO.5 IS THE WIFE OF LATE K.S. MUHAMMED HAJI,HOUSE WIFE RESIDING AT SAHIRA MANZIL,ANANGOOR,KASARAGOD VILLAGE KASARAGOD TALUK AND DISTRICT.) IN THE MATTER OF MINORS 1 KHADEEJATH SANA M.K., AGED 1 YEARS (DOB 18/12/1996) MFA.No. 176 of 2012 -2- 2. MARIYAM SANIYA M.K., AGED 5 YEARS (DOB 26/09/2006) 3. RABIYATH SHAZMA M.K., AGED 3 YEARS (DOB 05/09/2008) BY ADVS.SRI.A.BALAGOPALAN SRI.A.RAJAGOPALAN SRI.M.S.IMTHIYAZ AHAMMED SRI.M.N.MANMADAN RESPONDENT/RESPONDENT ----- NIL THIS MISC. FIRST APPEAL HAVING COME UP FOR ADMISSION ON 15-01-2013, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: PIUS C. KURIAKOSE & BABU MATHEW P. JOSEPH, JJ.

----- M. F. A (G & W) No.176 of 2012
----- Dated this the 15th day of January, 2013
JUDGMENT Pius C. Kuriakose, J Under challenge in this appeal preferred by the petitioners in O.P. No.30/02 (G&W) on the files of the District Court, Kasaragod is the judgment of that court in the above OP dismissing the OP. The OP was one filed under Section 7 and 29 of the Guardian & Wards Act seeking permission of the court to sell the undivided interest of three minors Khadeenath Sana, Rabiya Shazma M.K. and Mariyam Saniya M.K., the children of the first appellant in the subject property extending to 5.79 acres situated in Madhur village of Kasaragod district. Nobody contested the OP. The evidence before the court below consisted of Exts.A1 to A11 and the oral evidence of PW1, the first appellant. Ext.A10 M. F. A (G & W) No.176 of 2012 -2- was the valuation certificate issued by the local village officer in respect of the properties which is to the effect that the market value of the properties as per the fair value order notified by the Government will range between ` 7,000/- to ` 8,000/- per Are. The permission sought for by the appellant was for selling the property for a total sum of ` 37 lakhs i.e at a rate much higher than the value shown in Ext.A10.

2. We have heard the submissions of Sri.A.Balagopalan, the learned counsel for the appellants. Sri.Balagopalan submitted that it is in evidence that the property does not fetch any income. PW1 in her oral evidence gave more thrust to her grievance that she is finding it extremely difficult to look after the property and that was why the learned District Court took the view that the difficulty of anybody who is presently looking after the property will not be of a relevant consideration for granting permission in terms of Section 31 of the Guardian and Wards Act. M. F. A (G & W) No.176 of 2012 -3- According to Sri.Balagopalan, the property does not fetch any income at all as the first appellant, the person who is actually looking after the properties on behalf of the numerous co-owners to whom the property belongs, is not in a position to do agricultural operations in the property. The learned counsel submitted that if permission is granted to sell the property the sale consideration proportionately due to the minors can be deposited in their names in interest fetching account which will be of advantage. Sri.Balagopalan submitted that PW1 is ready and willing to file an additional affidavit stating clearly that the proposed sale will be of evident advantage to the minors as they, who are presently not getting any income from the property, will be getting interest from the deposit to be made by utilising their proportionate sale consideration.

3. Having regard to the decisions taken by this Court in various land acquisition appeals pertaining to land in Madhur M. F. A (G & W) No.176 of 2012 -4- and other villages in Kasaragod district we are of the view that the rate of ` 7,000/- to ` 8,000/- per Are shown in Ext.A10 valuation certificate is below the market rate. We are of the view that the correct market value of the property will be more than double the above rate. We rely on the additional affidavit filed by the first appellant also and are inclined to allow the appeal on conditions.

4. The result of the above discussion therefore, is as follows:- The impugned order is set aside and OP.30/12 (G&W) is allowed and the petitioners in the OP are granted permission to sell the interest of three minors in the property in question subject to the following conditions:- A sum of ` 20,000/- each will be deposited separately in the names of the three minors in an interest fetching account in a nationalised bank having branch at the place where the first appellant resides till such time as the minors M. F. A (G & W) No.176 of 2012 -5- attain majority. The

Fixed Deposit receipts shall be produced before the District Court, Kasaragod. The additional affidavit filed by the first appellant will form part of the records of this appeal. Sd/- PIUS C. KURIAKOSE JUDGE Sd/- BABU MATHEW P. JOSEPH JUDGE kns/- //TRUE COPY// P.A. TO JUDGE

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