

AustIn Rodricks Vs. Blasy Campus

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SooperKanoon Citation : sooperkanoon.com/1013331

Court : Kerala

Decided On : Jan-29-2013

Judge : Hon'Ble Mr. Justice a.V.Ramakrishna Pillai

Appellant : AustIn Rodricks

Respondent : Blasy Campus

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HON'BLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI TUESDAY, THE 29TH DAY OF JANUARY 2013 9TH MAGHA 193 OP(C).No. 2413 of 2012 (O) ----- OS.NO.1267/2010 OF II ADDL.SUB COURT, THIRUVANANTHAPURAM ----- PETITIONER : ----- AUSTIN RODRICKS SON OF A.L.M. RODRICKS, AGED 7 YEARS, TC 13/181 JOSE DALE, PETTAH P.O. THIRUVANANTHAPURAM, PIN - 695024. BY ADVS.SRI.V.SURESH SRI.G.SUDHEER RESPONDENT(S) : ----- 1. BLASY CAMPUS KARMALA RANI HOUSE, TC 33/200, VETTUCAUD BEACH P.O., THIRUVANANTHAPURAM, PIN

007.

2. LILY ALOYSIOUS WIFE OF LATE ALOYSIOUS PERRIERA PHILIP, TC 79/939 KRISHNA KRIPA, VAZHAVILA KADAVU, BEACH P.O., THIRUVANANTHAPURAM, PIN

007. R1 BY ADVS. SRI.R.S.KALKURA SRI. M.S. KALESH SMT. A.V. PRIYA SRI. HARISH GOPINATH THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 29-01-2013, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: Mn ...2/- OP(C).No. 2413 of 2012 (O) APPENDIX PETITIONERS' EXHIBITS : EXT.P-1 TRUE COPY OF THE SALE DEED NO.4142/09 DATED 24 11.2009 OF THIRUVANANTHAPURAM SUB REGISTRY. EXT.P-2 TRUE COPY OF THE PLAINT OS.NO.1267/2010 FILED BY BLASY CAMPUS BEFORE THE SUBORDINATE JUDGE'S COIURT, THIRUVANANTHAPURAM. DATED 27 10.2010. EXT.P-3 TRUE COPY OF THE PETITION FOR ATTACHMENT IN O.S.NO.1267 OF 201.FILED BY BLASY CAMPUS BEFORE THE SUBORDINATE JUDGE'S COURT, THIRUVANANTHAPURAM DATED 27 10.2010. EXT.P-4 TRUE COPY OF THE CLAIM PETITION IN I.A.7577/10 O.S.NO. 1267/2010 FILED BY AUSTIN RODRICKS BEFORE THE SUBORDINATE JUDGE'S COURT, THIRUVANANTHAPURAM. EXT.P-5 TRUE COPY OF THE STATEMENT OF OBJECTION FILED BY BLASY CAMPUS IN I.A.NO.7577/2011 IN O.S.NO.1267/2010 BEFORE THE SUBORDINATE JUDGE'S COURT, THIRUVANANTHAPURAM DATED 6 2.2012. EXT.P-6 TRUE COPY OF THE AMENDMENT PETITION I.A.904/12 IN O.S. NO.1267 OF 201.FILED BY BLASY CAMPUS BEFORE THE SUBORDINATE JUDGE'S COURT, THIRUVANANTHAPURAM DATED 6 2.2012. EXT.P-7 TRUE COPY OF ORDER DATED 15 2.2012 IN I.A.NO.7577 OF 201.IN O.S.NO.1267/2010 OF THE COURT OF SUB JUDGE, THIRUVANANTHAPURAM. EXT.P-8 TRUE COPY OF ORDER IN I.A.NO.904/2012 IN O.S.NO.1267/2010 OF THE COURT OF SUB JUDGE, THIRUVANANTHAPURAM. RESPONDENTS' EXHIBITS : NIL //TRUE COPY// P.S. TO JUDGE Mn A.V.RAMAKRISHNA PILLAI, J
----- O.P.(C) No.2413 of 2012
----- Dated this the 29th day of January, 2013
JUDGMENT The first respondent herein filed Ext.P2 suit, now pending as O.S.No.1267 of 2010 before the IInd Additional District Court, Thiruvananthapuram, against the second respondent for recovery of money. In the said suit, the first respondent obtained an ex parte order of attachment with respect to the property scheduled in Ext.P2 suit. The second respondent remained indifferent to the petition and she did not furnish any security.

2. The first respondent filed Ext.P6 application for amending the plaint. In the said application, he sought for amendment of the plaint to show in the body of the plaint the name of the revision petitioner as additional second defendant.

3. The case of the petitioner is that he had purchased 6.5 cents of land along with the building bearing Door not T.C.13/231(4) from the second respondent under Ext.P1 Sale Deed dated 24.11.2009. Therefore, he filed Ext.P4 application in Ext.P2 suit under Order XXXVIII Rule 8 read with Order XXI Rule 58 CPC. The trial court allowed Ext.P6 application allowing amendment as prayed for and posted Ext.P4 application along with the suit. Aggrieved by the said orders, the petitioner has come up before this Court.

4. Arguments have been heard and the impugned order was perused.

5. It is seen that Ext.P6 application for amendment of the plaint was allowed by the learned Special Judge by a single line order. In fact the first respondent sought amendment of the plaint so as to include the revision petitioner as the second defendant and to add a plea that Ext.P1 document is a fraudulent document executed by the revision petitioner and the second respondent in collusion. It appears that the learned Special Judge has not applied her mind while allowing Ext.P6 application. The amendment, so far as it relates to the inclusion of the revision petitioner as the second defendant, calls for an interference, though the other amendments sought for can be allowed to stand. However, as the learned Sub Judge has not passed a considered order, I am of the view that it is just and proper to remit the matter back to the Sub Court for consideration.

6. In the result, the order on Ext.P6 application is set aside and the matter is remitted back to the IIInd Additional Sub Court, Attingal for considering Ext.P4 application afresh in the light of what is stated above, after affording both sides an opportunity of being heard. Parties shall mark appearance before the trial court on the next date of posting. No costs. Sd/- A.V.RAMAKRISHNA PILLAI JUDGE css/
true copy P.S.TO JUDGE