

Surendra Babu Vs. Kousalya

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Court : Kerala

Decided On : Feb-04-2013

Judge : Honourable Mr.Justice Thomas P.Joseph

Appellant : Surendra Babu

Respondent : Kousalya

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE THOMAS P.JOSEPH MONDAY, THE 4TH DAY OF FEBRUARY 2013 15TH MAGHA 193 OP(C).No. 4509 of 2012 (O) ----- IA NO.2077/2012 IN CMA.34/2012 of ADDL.SUB COURT, IRINJALAKUDA IA NO.1490/2012 IN OS NO.722/2012 OF ADDITIONAL MUNSIFF COURT, IRINJALAKUDA PETITIONER(S): ----- SURENDRA BABU AGED 59 S/O.MOOKUPARAMBIL GOPALAN, EDATHIRINJI VILLAGE DESOM MUKUNDAPURAM TALUK, PIN-680122. BY ADVS.SRI.G.SREEKUMAR (CHELUR) SRI.K.RAVI (PARIYARATH) RESPONDENT(S): ----- 1. KOUSALYA W/O.KUNNATHUPARAMBIL RAMAN EDATHIRINJI VILLAGE DESOM, MUKUNDAPURAM TALUK PIN-680122.

2. SUNIL KUMAR MADATHIPARAMBIL HOUSE, EDATHIRINJI VILLAGE, DESOM MUKUNDAPURAM TALUK, PIN-680122. R1 & R2 BY ADV. SRI.K.S.BHARATHAN THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 04-

02-2013, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:
OP(C) NO.4509/2012 APPENDIX PETITIONER(S) EXHIBITS EXHIBIT P1: TRUE COPY OF THE PLAINT IN OS NO.722/2012 ON THE FILE OF THE MUNSIF COURT, IRINJALAKUDA DT.13-3-2012. EXHIBIT P2: TRUE COPY OF THE COMMISSIONER'S REPORT AND PLAN IN EXT P1 SUIT DATED 30 3-2012. EXHIBIT P3: TRUE COPY OF THE ORDER PASSED IN IA 1490/2012 IN OS 722/2012 DT.13-4-2012 ON THE FILE OF THE ADDL.MUNSIF COURT, IRINJALAKUDA. EXHIBIT P4: TRUE COPY OF THE ORDER PASSED IN IA 2077/2012 IN CMA 34/2012 ON THE FILE OF THE SUB COURT, IRINJALAKUDA DT.30-11-2012. RESPONDENTS' EXHIBITS: NIL //TRUE COPY// P.S. TO JUDGE THOMAS P.JOSEPH, J.

===== O.P(C) No.4509 of 2012
===== Dated this the 04th day of
February, 2013

JUDGMENT

Respondent appears through counsel.

2. Petitioner-plaintiff challenges Ext.P4, order dated 30.11.2012 on I.A. No.2077 of 2012 in C.M.A. No.34 of 2012 of Additional Sub Court, Irinjalakuda. That appeal arose from Ext.P3, order dated 13.04.2012 on I.A. No.1490 of 2012 in O.S. No.722 of 2012 of the Additional Munsiff's Court, Irinjalakuda. Petitioner claimed that plaint A schedule - 8 cents belongs to him and his brother's son, Aneesh as per partition deed No.1010/2011 (as D schedule to that document). Plaint B schedule is 3.5 cents being the western portion of plaint A schedule claimed to be orally assigned to the 1st respondent. Plaint C schedule is the remaining part of plaint A schedule (excluding plaint B schedule). Petitioner alleged that respondents have trespassed into the plaint C schedule and attempted to construct a building therein. Hence the suit for recovery of possession of plaint C schedule and for prohibitory injunction to restrain the 1st respondent from making construction in plaint C schedule. Seeking temporary injunction in the same line, petitioner filed I.A. No.4019 of 2012. O.P(C) No.4509 of 2012 -:

2. :- 3. First respondent contended that the entire 10 cents was given to her by the father of petitioner at a time when she was his maid servant. Of the 10 cents she surrendered 1= cents for formation of the road. Rest of that property (8= cents) belongs to and is in her possession. The hut belonging to the 1st respondent was washed away in rain. She was sanctioned Rs.1,00,000/- by the local authority for the construction of the house. She claimed kudikidappu over the 8= cents.

4. Learned Munsiff observed that based on Ext.A1, partition deed alone title claimed by petitioner over the suit property cannot be upheld. Learned Munsiff was not inclined to grant temporary injunction as prayed for. Dismissal of I.A. No.1490 of 2012 was challenged in C.M.A. No. 34 of 2012. Petitioner filed I.A. No.2077 of 2012 for an order of temporary injunction. That application was dismissed by the learned Sub Judge while the C.M. Appeal remains pending.

5. Learned counsel has referred me to certain statements in Exts.P3 and P4, orders concerning title claimed by petitioner which according to the learned counsel is objectionable. According to the learned counsel, for a decision on the question whether petitioner has a prima facie case it is sufficient that the O.P(C) No.4509 of 2012 -:

3. :- partition deed, Ext.A1, is referred to.

6. Having heard learned counsel, I am inclined to think that the appropriate course was to dispose of the C.M. Appeal itself rather than disposing of I.A. No.2077 of 2012 and keeping the C.M. Appeal pending.

7. Now that I.A. No.2077 of 2012 is disposed of, there is no reason to interfere with the said order. But the observation/finding contained in Ext.P4, order shall not influence learned Sub Judge in disposing of C.M.A. No.34 of 2012. I make it clear that whatever observation learned Sub Judge has made as per Ext.P4, order as to the acceptance of title claimed by petitioner over the suit property will stand confined to the disposal of I.A. No.2077 of 2012.

8. Learned Sub Judge is directed to dispose of C.M.A. No.34 of 2012 untrammelled by the observations/findings contained in Ext.P4, order on I.A.

No.2077 of 2012 which shall stand confined to the disposal of I.A. No.2077 of 2012 alone. The Original Petition is disposed of with the above direction. THOMAS P. JOSEPH, JUDGE. vsv

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