

Ummer Vs. Padunnelakath Beevu

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Court : Kerala

Decided On : Jan-31-2013

Judge : Honourable Mr.Justice N.K.Balakrishnan

Appellant : Ummer

Respondent : Padunnelakath Beevu

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE N.K.BALAKRISHNAN THURSDAY, THE 31ST DAY OF JANUARY 2013 11TH MAGHA 193 RSA.No. 707 of 2012 () ----- AGAINST THE JUDGMENT IN AS.96/2003 of SUB COURT, TIRUR DATED 30 11-2011 AGAINST THE JUDGMENT IN OS.258/2002 of MUNI-MAGI.COURT,PONNANI DATED 16 06-2003 APPELLANT(S)/APPELLANTS/RESPONDENT/DEFENDANT:

----- UMMER S/O. PADUNNELAKATH MUHAMMED @ BAPPU PADUNNELAKATH HOUSE, KADAVANAD AMSOM DESOM KADAVANAD.P.O., PIN-PONNANI TALUK MALAPPURAM DISTRICT. REP. BY P/A. HOLDER FATHIMA D/O. MUHAMMED PADUNNELAKATH HOUSE KADAVANAD AMSOM DESOM, KADAVANAD.P.O., PONNANI TALUK MALAPPURAM DISTRICT. BY ADV. SRI.JAMSHEED HAFIZ RESPONDENT(S)/APPELLANT/PLAINTIFF:

----- PADUNNELAKATH BEEVU D/O. PADUNNELAKATH MUHAMMED @ BAPPU PADUNNELAKATH HOUSE,

KADAVANAD AMSOM DESOM KADAVANAD.P.O., PONNANI TALUK, MALAPPURAM DISTRICT. BY ADV. SRI.K.S.MANU (PUNUKKONNOOR) BY ADV. SRI.M.SURESH KUMAR THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 31-01-2013, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: **das N.K.BALAKRISHNAN, J.**

===== R.S.A. No. 707 of 2012 =====

Dated this the 31st day of January, 2013 JUDGMENT Defendant in a suit for partition is the appellant. Though a preliminary decree was passed by the trial court, the house situated in the plaint schedule property was directed to be allotted to the defendant. Hence, the plaintiff challenged the same before the appellate court.

2. The appellate court held that the plaint schedule property is to be divided into 36 equal shares by metes and bounds and that 29 such shares shall be allotted to the plaintiff and the remaining 7 shares shall be allotted to the defendant. The direction issued by the trial court to set apart the house to the defendant was set aside by the appellate court which directed that the said property is partible after valuing the building and that the question of equity is to be considered in the final decree R.S.A No.707/2012 :

2. : proceedings. The defendant has come up in appeal challenging the same.

3. Heard the learned counsel for the appellant. It is submitted that the lower appellate court was not justified in ignoring the evidence adduced on the side of the defendant to show that huge amount was spent for renovation of the building. The fact that the plaintiff is entitled to get 29/36 shares and that the defendant is entitled to get the remaining shares is not in dispute. It is also not in dispute that there is a house building situated in that property. Even if it is accepted that the defendant had spent any amount for renovation of the building, it cannot be said that on account of that the house should be allotted to his share after valuation or without valuation. The lower appellate court has rightly said that one co-owner cannot build upon a co-ownership property in such a way as to defeat the legitimate right of other co- owners. The lower appellate court was justified in holding that the plaint schedule property including the R.S.A No.707/2012 :

3. : house is available for partition. The question of equity is a matter to be considered in the final decree proceedings. No substantial question of law is involved in the matter. Hence, this appeal is dismissed. Sd/- N.K.BALAKRISHNAN, JUDGE das // True copy // PA to Judge

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