

Soumini K. Vs. Lakshmi

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Court : Kerala

Decided On : Jan-31-2013

Judge : Honourable Mr.Justice N.K.Balakrishnan

Appellant : Soumini K.

Respondent : Lakshmi

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. 117 of 2013 () ----- AGAINST THE JUDGMENT IN AS.53/2012 of DISTRICT & SESSIONS COURT, PALAKKAD AGAINST THE JUDGMENT IN OS.310/2011 of PRL.MUNSIFF COURT, PALAKKAD APPELLANT(S)/APPELLANTS/APPELLANT/DEFENDANTS:

1. SOUMINI K. AGED 5 YEARS W/O. APPUKUTTAN, AMBALAPARAMBU HOUSE KODUNTHIRAPULLY AMSOM, PIRAYIRI POST PALAKKAD DISTRICT.
2. APPUKUTTAN AGED 6 YEARS S/O. CHAMI, AMBALAPARAMBU HOUSE, KODUNTHIRAPULLY AMSOM PIRAYIRI POST, PALAKKAD DISTRICT.
3. SEENA AGED 2 YEARS D/O. APPUKUTTAN, AMBALAPARAMBU HOUSE KODUNTHIRAPULLY AMSOM, PIRAYIRI POST PALAKKAD DISTRICT. BY ADVS.SRI.SAJAN VARGHEESE K.SRI.LIJU. M.P

RESPONDENT(S)/RESPONDENT/RESPONDENT/PLAINTIFF: LAKSHMI, AGED 8 YEARS W/O. LATE KUPPU, AMBALAPARAMBU HOUSE KODUNTHIRAPULLY AMSOM, PIRAYIRI POST PALAKKAD DISTRICT -678 101 ADV. SRI. BINOY VASUDEVAN THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 31-01-2013, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: N.K.BALAKRISHNAN, J.

..... R.S.A. 117 of 2013
..... Dated:

31. 01-2013 JUDGMENT Defendants in a suit for mandatory injunction are the appellants. The plaintiff/respondent who is 82 years is the mother of the first appellant. The second appellant is her husband and the third appellant is her daughter. The plaint schedule building and other properties originally belonged to Kuppu the father of the first appellant who is the husband of the first respondent Lakshmi. On the death of Kuppu his right over the properties devolved upon his legal heirs, the first appellant, respondent and three others. The legal heirs entered into a partition as per document No. 1711/1997 as per which the plaint schedule properties were set apart in favour of the respondent/plaintiff. It was stated that the defendants were permitted to reside in the plaint schedule property. R.S.A. 117 of 2013 :-2:- Because of the strained relationship and because of the intolerable treatment meted out to the plaintiff/respondent she sought for eviction withdrawing the license/permission granted by her to the first defendant. Defendants 2 and 3 are residing only as the husband and daughter of the first defendant.

2. Subsequently, suppressing the earlier partition deed a suit was filed for partition of the plaint schedule property. That suit was not pressed in view of Ext.A3 agreement entered into between the parties whereby the plaintiff was to pay Rs. 1,00,000/- to the first defendant. and there was also a condition that the first defendant should be permitted to reside in the plaint schedule house for 60 days. It is stated that the sum of Rs. 1,00,000/- as agreed upon was paid. After the period of 60 days stipulated as per Ext.A3 agreement since the defendants failed to vacate the premises the suit was filed for mandatory injunction directing the

defendants to vacate the house. R.S.A. 117 of 2013 -:3:- 3. The suit was resisted by the defendants raising so many contentions. It was contended by the first defendant that the plaint schedule house is a shared-house-hold and that she is entitled to reside in the house. These contentions were negated by the courts below. The fact that the property belonged to Kuppu and after his death the properties were partitioned was not in serious dispute. It was also not disputed that the suit filed by the first defendant was dismissed as not pressed in view of Ext.A3 agreement. As per Ext. A3 agreement the first defendant was permitted only to reside in the house for 60 days from the date of the agreement. That expired long prior to the filing of the suit. The defendants have no right of residence in the plaint schedule property.

4. The contention very much advanced by the appellants was that the first defendant had a right of residence. She is a married woman. She is married to the 2nd defendant. The claim, if any, under the Prevention of Women from Domestic Violence Act can be levelled by the R.S.A. 117 of 2013 -:4:- first defendant only against the 2nd defendant. The respondent Lakshmi is not related to the husband of the first defendant. It is seen that the first appellant who is the daughter wanted to see that her own mother aged 82 is harassed to the maximum even during her last days . The courts below have analysed the evidence in the correct perspective. No question of law, much less, any substantial question of law arises in this case. Hence, this R.S. A. is only to be dismissed. In the result, this Appeal is dismissed in limine. Dated this the 31st day of January, 2013. Sd/- N.K.BALAKRISHNAN, JUDGE. ani/ /truecopy/ P.S. toJudge

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