

**Rajani Vs. Mini**

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**SooperKanoon Citation :** [sooperkanoon.com/1089002](http://sooperkanoon.com/1089002)

**Court :** Kerala

**Decided On :** Sep-09-2013

**Judge :** Honourable Mr.Justice Antony Dominic

**Appellant :** Rajani

**Respondent :** Mini

**Judgement :**

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE ANTONY DOMINIC & THE HONOURABLE MR. JUSTICE P.D.RAJAN MONDAY,THE9H DAY OF SEPTEMBER201318TH BHADRA, 1935 OP (FC).No. 2287 of 2013 (R) -----

PETITIONER(S)/1ST PLAINTIFF: ----- RAJANI AGED32YEARS D/O.LATE KOCHU VAVA, KANCHIYATH HOUSE, KAMMATTIPADAM KOCHI. BY ADV. SRI.A.S.SASIDHARAN

RESPONDENT(S)/DEFENDANTS: ----- 1. MINI, AGED35YEARS D/O.KOCHU VAVA, KANJIYATH HOUSE, KAMMATTIPADAV COCHIN-20 2. AMMINI, AGED61YEARS W/O.KOCHU VAVA, KANJIYATH HOUSE, KAMMATTIPADAV COCHIN-20.

3. GINIL,, AGED28YEARS S/O.KOCHU VAVA, KANJIYATH HOUSE, KAMMATTIPADAV COCHIN-20 4. SUNIL KUMAR K.K, AGED38YEARS THUNDIPPARAMBIL HOUSE, KUMBALAM P.O, KOCHI5 RINI, AGED35YEARS W/O.PRATHAPAN, KANJIYATH HOUSE, KAMMATTIPADAV COCHIN-20 6.

SHALINI.M.P, AGED26YEARS MOOLAKKATHARA HOUSE, NADUVATH NAGAR P.O, CHERTHALA.

7. JEEJAN.K, AGED31YEARS S/O.THANKACHAN, THUNDATHIL HOUSE, RAIL NAGAR VYTTILA P.O, KOCHI-19. R1,R2,R3,R4 & 5 BY ADV. SRI.P.J.JOSEPH PANIKKASSERY R6 BY ADV. SRI.K.S.MOHAMAD HASHIM R6 BY ADV. SRI. CAROLIN SINDHU VAZ R6 BY ADV. SRI.JAI MOL.P.A. R7 BY ADV. SRI.JIMMY GEORGE (VATTATHARA) R7 BY ADV. SRI.T.S.JIBU THIS OP (FAMILYCOURT) HAVING BEEN FINALLY HEARD ON0909-2013, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: OP (FC).No. 2287 of 2013 (R)  
----- APPENDIX PETITIONER(S)' EXHIBITS  
----- EXHIBIT P1: TRUE COPY OF THE DEATH CERTIFICATE OF PETITIONER'S FATHER DATED0305.95. EXHIBIT P2: TRUE COPY OF THE SALE DEED NO.1264/78 OF S.R.O, ERNAKULAM. EXHIBIT P3: TRUE COPY OF THE PLAINT IN O.S.NO.457/2012 PENDING BEFORE THE2D ADDITIONAL SUB COURT, ERNAKULAM. EXHIBIT P4: TRUE COPY OF THE EA NO.50/13 IN EP NO.6/08 IN O.P NO.1136/06 FILED7H RESPONDENT BEFORE THE FAMILY COURT, ERNAKULAM. RESPONDENT(S)' EXHIBITS  
-----: NIL TRUE COPY PA TO JUDGE. acd ANTONY DOMINIC & P.D. RAJAN, JJ.

----- O.P.(FC)No.2287 of 2013  
----- Dated this the 09th day of September, 2013

JUDGMENT

**ANTONY DOMINIC,J.**

Ext.P2 is the document, whereby, 4.29 cents of land scheduled therein was purchased by one 'Kochuvava' and his wife, the 2nd respondent herein. Subsequently, 'Kochuvava' expired on 25.4.1995 and Ext.P1 is the death certificate. According to the petitioner, half of the property was inherited by 'Kochuvava's children and the 2nd respondent and the remaining half belonged absolutely to the 2nd respondent wife.

2. The 4th respondent is one of the sons of the above couple and the 6th respondent was his wife. The 4th respondent divorced the 6th respondent and subsequently, the 6th respondent filed O.P.No.1136/2006 with the deceased 'Kochuvava', the 2nd respondent and the 4th respondent as respondents. On 10.4.2007, the O.P. was decreed entitling the 6th respondent to recover an amount of Rs.1,75,000/- with interest thereon. For executing the decree, E.P.No.6/2008 was filed with a prayer to proceed against the entire property covered by Ext.P2, which was already under attachment. O.P.(FC)No.2287/13 2 3. According to the petitioner, objection was filed by the other children of 'Kochuvava' and the 2nd respondent and an another objection was also filed against the upset price of Rs.5 lakhs fixed. Objections were rejected and finally the property was auctioned and the 7th respondent purchased the property for Rs.5,00,100/-.

4. E.A.No.51/2012 was filed by the petitioner, one of the daughters of 'Kochuvava' and the 2nd respondent, praying to set aside the sale. That E.A. was ultimately dismissed by the Family Court. That order was challenged before this Court in Mat. Appeal No.771/2012. The appeal was dismissed by judgment dated 30.01.2013. In the meanwhile, the petitioner and the 1st respondent, two daughters of 'Kochuvava' and the 2nd respondent filed O.S.No.457/2012 with respondents 2 to 4 and 6 as the defendants, praying for partition and other incidental prayers. During the pendency of the suit, the 7th respondent filed E.A.No.50/2013 in E.P.No.6/2008 praying for delivery of the property. It is at that stage, this writ petition has been filed with a prayer to keep further proceedings in E.P.No.6/2008 in O.P.No.1136/2006 in abeyance and also not to vacate the petitioner and respondents 1 to 5 from the property covered by Ext.P2 and the decree in the O.P.

5. We heard the learned counsel for the petitioner and also the learned counsel appearing for respondents. O.P.(FC)No.2287/13 3 6. Admittedly, the decree in O.P.No.1136/2006 has become final . In E.P.No.6/2008, the property has also been sold to the 7th respondent and the sale also has become concluded by virtue of dismissal of E.A.No.51/2012 and its confirmation by dismissal of Mat. Appeal No.771/2012. In such a situation, since the decree as well as the sale has attained finality, the auction purchaser is entitled to get the property delivered and this

Court cannot restrain the Family Court from proceeding further with the E.P. and delivering the property to the auction purchaser.

7. The learned counsel for the petitioner contended that justice demands that she should be permitted to deposit the decree amount and on that basis, avoid further proceedings in the E.P. mentioned above. However, such a proposal was not agreeable for the 7th respondent. In any case, this Court can only render justice in accordance with law and legally the petitioner is not entitled to any relief and therefore, this Court cannot pass any order as sought for by the petitioner. The O.P.(F.C.), therefore, fails and it is accordingly dismissed. ANTONY DOMINIC, JUDGE P.D. RAJAN, JUDGE. acd O.P.(FC)No.2287/13 4 O.P.(FC)No.2287/13 5

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