

Fathima Vs. State of Kerala

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Court : Kerala

Decided On : Sep-27-2013

Judge : Honourable Mr.Justice K.Harilal

Appellant : Fathima

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON FRIDAY, THE 27TH DAY OF SEPTEMBER 2013 5TH ASWINA, 1935 WP(C).No. 11638 of 2013 (D) ----- AGAINST THE

ORDER

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JUDGMENT

IN OS4682012 of SUB COURT, IRINJALAKKUDA PETITIONER : ----- PRINCE, AGED 35 YEARS, S/O PURUSHOTHAMAN, VADAKKEDATH HOUSE, POOLANI DESOM, MELOOR VILLAGE, MUKUNDAPURAM TALUK. BY ADV. SRI.ESM.KABEER RESPONDENTS : ----- 1. RAGHU, AGED 50 YEARS, S/O JINARAJAN, KOKKUVEYIL, JANATHA AMBELIPADAM, PLOT NO.16, PANCHAVADI COLONY, VYTTILA DESOM, POONITHURA VILLAGE, KANAYANNUR TALUK - 682 019.

2. THE SUB REGISTRAR, SUB REGISTRAR OFFICE, CHALAKKUDY - 680 307. R1 BY ADV. SRI.PRAVEEN K. JOY R2 BY SENIOR GOVERNMENT PLEADER SMT.M.J.RAJASREE THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 27-09-2013, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: RKM -2- WP(C).No. 11638 of 2013 (D) -----
APPENDIX PETITIONER'S EXHIBITS : ----- EXHIBIT P1: COPY OF THE PLAINT IN O.S.NO.468/2012 OF THE SUB COURT, IRINJALAKUDA. EXHIBIT P2: COPY OF THE PLAINT IN O.S.NO.276/2011 OF THE MUNSIF COURT, CHALAKKUDY. EXHIBIT P3: COPY OF THE COUNTER AFFIDAVIT FILED IN O.S.NO.468/2012 OF THE SUB COURT, IRINJALAKKUDA. EXHIBIT P4: COPY OF THE COMMUNICATION ISSUED BY THE VILLAGE OFFICER, MELUR DATED 10.10.2012. EXHIBIT P5: COPY OF THE COMPLAINT SUBMITTED BEFORE THE HON'BLE CHIEF MINISTER OF KERALA. EXHIBIT P6: COPY OF THE MESSAGE DATED 17.07.2011 REGARDING THE FURTHER ACTION ON EXHIBIT P5. RESPONDENTS' EXHIBITS : NIL -----
TRUE COPY PA TO JUDGE RKM P.R. RAMACHANDRA MENON, J.

..... W.P.(C)No. 11638
OF 2013..... Dated this the 27th
September, 2013

JUDGMENT

The petitioner has approached this Court with the following prayers: "i) to call for the records relating to Exhibits P1 to P6 and to issue a writ of mandamus directing the 2nd respondent not to register the property covered by document No.1035/1/2006 of SRO, Chalakkudy pending disposal of Exhibits P1 and P2; ii) any other reliefs also may be granted in order to meet out justice considering the circumstances of the case." 2. The learned Counsel for the first respondent submits that the petitioner has already approached the Sub Court, Irinjalakkuda by filing O.S.No.468 of 2012 for passing a decree for cancellation of a registered Sale Deed bearing No.1035/2006 of the Sub Registry, Chalakkudy. The first respondent has filed a Civil Suit as O.S.No.276 of 2011 for evicting the petitioner from the concerned building, which is pending consideration before the Munsiff's Court,

Chalakkudy.

3. The petitioner has sought to justify himself referring to the plea, as raised by the first respondent in O.S. 468 of 2012 W.P.(C)No. 11638 OF20132 that there was some transaction with the Bank and that the Bank has initiated SARFAESI proceedings, in respect of which, S.A.75/2009 is pending before the DRT, Ernakulam; and hence the Civil Court has no jurisdiction to entertain the Suit. It is settled law that jurisdiction of the Civil Court is barred only in respect of the matters over which power and jurisdiction stands transferred to the DRT and in respect of all other matters, except to the extent which specifically comes within the purview of the DRT, jurisdiction is still with the Civil Court. In any view of the matter, the main relief sought for in the writ petition virtually amounts to an interim relief, which could be sought for in the pending matters before the concerned Courts or can be agitated by way of other appropriate alternate remedy. Relegating the petitioner to avail the said remedy, interference is declined and the writ petition is dismissed. P.R.RAMACHANDRA MENON JUDGE Ik

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