

K. Dathan Vs. Sarojini

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Court : Kerala

Decided On : Nov-01-2013

Judge : Honourable Mr.Justice N.K.Balakrishnan

Appellant : K. Dathan

Respondent : Sarojini

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE
HONOURABLE MR.JUSTICE N.K.BALAKRISHNAN FRIDAY, THE 10TH DAY OF
NOVEMBER 2013 10TH KARTHIKA, 1935 RSA.No. 1435 of 2011 ()
----- AGAINST THE

JUDGMENT

COURT, THODUPUZHA IN AS802010 of THE DISTRICT & SESSIONS AGAINST
THE

JUDGMENT

DEVIKULAM IN OS12007 THE MUNSIFF COURT,
APPELLANT(S)/RESPONDENT: ----- K. DATHAN S/O.
KOCHUPAPPU, AGED 59 YEARS, BHARATH BHAVAN MASSIVAYAL KARA,
MARAYOOR.P.O, MARAYOOR VILLAGE DEVIKULAM TALUK, IDUKKI
DISTRICT MUNNAR.P.O, PIN- 685 612 BY ADV. SRI.N.M.VARGHESE
RESPONDENT(S)/APPELLANTS: ----- 1. SAROJINI W/O. RAJAN,

AGED63YEARS, PUTHUTHARA VEEDU MASSIVAYAL, MARAYOOR,
MARAYOOR VILLAGE DEVIKULAM TALUK2 PADMAVATHI W/O. SASI,
AGED55YEARS, MULEKUZHI VILLAGE PAPPANIKKARA,
PERUMBAVOOR.P.O, PERUMBAVOOR VILLAGE KUNNATHUNADU TALUK.
BY ADV. SMT.REKHA C.NAIR THIS REGULAR SECOND APPEAL HAVING
COME UP FOR ADMISSION DELIVERED THEON0111-2013, THE COURT ON
THE SAME DAY FOLLOWING: N.K. BALAKRISHNAN, J.

..... R.S.A. No. 1435 of 2011
..... Dated:1-11-2013

JUDGMENT

The defendant in a suit for partition is the appellant. A preliminary decree was passed directing division of the plaint schedule property into three equal shares and to allot one such share each to plaintiffs 2 and 3. The appellant is entitled to get the other share but it was not separately ordered to be allotted since no court fee was paid. The preliminary decree so passed by the trial Court was confirmed by the appellate Court.

2. Plaintiffs 2 and 3 are the daughters and the defendant is the son of late Bharathi who died intestate. They are the only legal heirs of deceased Bharathi. R.S.A. No. 1435 of 2011 2 According to the plaintiffs, late Bharathi left behind 73.136 cents of land in respect of which patta was obtained by her. That patta was not seen produced. According to the plaintiffs, Bharathi was in possession of the property till her death and on her death the right over the property devolved upon plaintiffs 2 and 3 and the defendant. Hence, plaintiffs 2 and 3 are entitled to get 1/3 share each and the defendant is entitled to get the remaining 1/3 share. Since the defendant did not heed to the request for having partition of the property, the suit was filed.

3. The defendant filed written statement contending that the plaint schedule property is not partible and that the said property is in his absolute possession and enjoyment. It was also contended that the plaint schedule property is not a patta land as R.S.A. No. 1435 of 2011 3 contended by the plaintiff. It was also contended that mother of the defendant (Bharathi) had executed an unregistered

gift deed in favour of the defendant on 20-09-1997 in respect of the said property and since then she has been in possession of the property. It was also contended that the defendant's mother had 79 cents of patta land in Sy. No. 131/1 and that was sold to one Pownthai as per a registered sale deed of 1990. Yet another contention raised by the defendant is that his mother had 30 cents of land in Marayur Village in Sy. No. 131/1 and that was given to the second plaintiff and she sold the same to one Sankamma. According to the defendant, his mother has some other patta land also.

4. The first plaintiff was examined as P.W.1 and Exts. A1 to A7 were marked. On behalf of the R.S.A. No. 1435 of 2011 4 defendants Exts.B1 and B2 were marked. Exts. B1 and B2 are only the building tax receipts which will not in any way help him to contend that the plaint schedule property is not partible.

5. Ext.A5 is the certified copy of the judgment in O.S. 130/2005 of Munsiff Court, Devikulam. In that suit it was held that the suit property was held by late Bharathi , the mother of the plaintiffs 2 and 3 and the defendant. O.S.130/2005 was dismissed holding that the said property is a co-ownership property of plaintiffs 1 and 2 and the defendant. The decree therein became final and as such the plea now raised by the defendant that the plaint schedule property is not partible, is barred by res judicata. There is a definite finding that the plaint schedule property was the patta land owned by late Bharathi and so after her demise the plaintiffs 2, R.S.A. No. 1435 of 2011 5 3 and defendant who are the legal representatives are entitled to get 1/3 share each. Though the patta as per which the land was assigned to late Bharathi was not produced that is found to be not a reason to non- suit the plaintiff in view of the judgment in Ext. A5 suit. Since Ext. A5 suit was actually in respect of the suit property herein and since that finding is definite and conclusive the defendant is estopped from contending otherwise.

6. The trial court directed the plaintiffs to produce the patta (original or the certified copy) issued in respect of the plaint schedule property so as to measure and demarcate the different plots to be allotted to the parties. Such a direction was issued only to enable the Advocate Commissioner for effecting proper division of the property in question. That does not mean that late R.S.A. No. 1435 of 2011 6

Bharathi had no title to the property. Even without that patta the partition can be effected because the parties know what the property is and what is property referred to in Ext.A5 suit. Since the plea raised by the defendant is barred by res judicata, no other point survives for consideration. The preliminary decree granted by the trial court which was confirmed in appeal is only to be confirmed. No substantial question of law arises. Hence, this Second Appeal is dismissed. Dated this the 1st day of November, 2013. Sd/-N.K.BALAKRISHNAN, JUDGE. /truecopy/
P.S.toJudge

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