

Maya Vs. Damodaran

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Court : Kerala

Decided On : Dec-11-2013

Judge : Honourable Mr.Justice N.K.Balakrishnan

Appellant : Maya

Respondent : Damodaran

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE N.K.BALAKRISHNAN WEDNESDAY, THE 11TH DAY OF DECEMBER 2013 20TH AGRAHAYANA, 1935 RSA.No. 499 of 2013 (A) ----- AS512011 of SUB COURT, PALA I.A.No.683/07 IN OS2422001 of MUNSIFF COURT, KANJIRAPPALLY ----- APPELLANT(S)/PLAINTIFFS :- ----- 1. MAYA, D/O.LATE KUTTAPPAN, HINDU, ARTISAN KOTTATHUPUTHUSSERIL, PONKUNNAM.P.O CHIRAKADAVU VILLAGE, KANJIRAPPALLY TALUK (IST PLAINTIFF).

2. PRIYA, D/O.LATE KUTTAPPAN, HINDU, ARTISAN KOTTATHUPUTHUSSERIL, PONKUNNAM.P.O CHIRAKADAVU VILLAGE, KANJIRAPPALLY TALUK (IST PLAINTIFF). BY ADVS.SRI.V.C.JAMES SRI.C.HARINDRAMOHAN NAIR SRI.SERGI JOSEPH THOMAS RESPONDENT(S) :- ----- 1. DAMODARAN, AGED ABOUT 76 YEARS S/O.LATE SANKARAN, HINDU, ARTISAN KOTTATHUPUTHUSSERIL, PONKUNNAM.P.O CHIRAKADAVU VILLAGE, KANJIRAPPALLY TALUK - 686

121.

2. BABU, AGED ABOUT 46 YEARS S/O. LATE KUTTAPPAN, HINDU, ARTISAN KOTTATHUPUTHUSSERIL, PONKUNNAM.P.O CHIRAKADAVU VILLAGE, KANJIRAPPALLY TALUK - 686 121.

3. REJI, AGED 43 YEARS, S/O. LATE KUTTAPPAN, HINDU, ARTISAN KOTTATHUPUTHUSSERIL, PONKUNNAM.P.O., CHIRAKADAVU VILLAGE KANJIRAPPALLY TALUK PRESENTLY RESIDING AT KOTTARATHIL GANDHI NAGAR, ARPOOKARA.P.O, ARPOOKARA VILLAGE KOTTAYAM TALUK - 686 101.

4. DEVAKI, AGED 66 YEARS W/O. LATE KUTTAPPAN, HINDU, ARTISAN KOTTATHUPUTHUSSERIL, PONKUNNAM.P.O., PIN - 686 121 CHIRAKADAVU VILLAGE, KANJIRAPPALLY TALUK. RSA.No. 499 of 2013 5. THANKAMMA,, AGED ABOUT 83 YEARS D/O. LATE SANKARAN, HINDU, ARTISAN HEMALI ESTATE, CHAPPATHU.P.O, IDUKKI DISTRICT - 685 101.

6. GOWRI,, AGED ABOUT 74 YEARS D/O. LATE SANKARAN, HINDU, ARTISAN NELLIKATHAKADIYIL, CHIRAKADAVU CENTRE.P.O CHIRAKADAVU VILLAGE, KANJIRAPPALLY TALUK - 686 131.

7. SAROJINI,, AGED ABOUT 72 YEARS D/O. LATE SANKARAN, HINDU, ARTISAN NELLIKATHAKADIYIL, CHIRAKADAVU CENTRE.P.O CHIRAKADAVU VILLAGE, KANJIRAPPALLY TALUK - 686 131.

8. SHERLY,, AGED ABOUT 37 YEARS W/O. LATE VIJAYAN, HINDU, ARTISAN KOTTATHUPUTHUSSERIL, PONKUNNAM.P.O CHIRAKADAVU VILLAGE, KANJIRAPPALLY TALUK - 686 121.

9. BIBITHA,, AGED ABOUT 20 YEARS D/O. LATE VIJAYAN, HINDU, ARTISAN KOTTATHUPUTHUSSERIL, PONKUNNAM.P.O CHIRAKADAVU VILLAGE, KANJIRAPPALLY TALUK - 686 121.

10. BIBIN (MINOR),, AGED ABOUT 14 YEARS S/O. LATE VIJAYAN, HINDU, ARTISAN KOTTATHUPUTHUSSERIL, PONKUNNAM.P.O CHIRAKADAVU

VILLAGE, KANJIRAPPALLY TALUK, PIN - 686 121 REPRESENTED BY HIS MOTHER AND GUARDIAN⁸H RESPONDENT. R1 BY ADV. SRI.T.I.ABDUL SALAM THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 11-12-2013, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: jvt N.K.BALAKRISHNAN, J.

----- R.S.A. No.499 of 2013 ----- Dated
this the 11th day of December 2013

JUDGMENT

Plaintiffs are the appellants. The final decree passed in a suit for partition is challenged in this RSA. When the Advocate Commissioner went to the property for effecting division, objections were raised by the appellants to the effect that they should be allotted property abutting the road. The appellants were entitled to get only 2/30 shares. Since objections were raised to the effect that they should be allotted the plot abutting the road lying on the eastern side, the only alternative found by the Advocate Commissioner was to divide the property in a length wise manner so that each plot would be having a road frontage on the east. The width of the property happened to be only 3.2 metres, 1.7 metres etc. depending on the share to which they were entitled to. It was only then the appellants realised the folly committed by them. R.S.A. No.499 of 2013 -:

2. :- 2. Now, the appellants wanted the plot in such a way that it must be capable of being enjoyed. The plot as it stands now having a width of only 1.7 metres may not be of any use. It happened to be done only because of the objection raised by the plaintiffs. The total extent of the property available is about 79 cents. So, on an arithmetical calculation, the total extent of the property which the appellants should be entitled to get is nearly 5 cents (2.08 Ares). If such a plot is allotted almost in a rectangular shape it may be possible for the appellants to put up a house in that property. It is stated that the sharers to whom the plots 5, 7 and 6 are allotted are going together. Since they are the major share holders, they are getting more extent of the property abutting the road. Considering all the aspects, I find that in order to render justice to the parties, the matter has to be remanded to the trial court. But the entire expense for issuance of a commission shall be met by the

appellants herein since it was because of their fault that the division happened to be made in the manner stated above. Besides, the appellants should also be directed to pay Rs.2,000/- (Rupees Two Thousand only) to R.S.A. No.499 of 2013 -:

3. :- the first respondent in this appeal. The said amount shall be deposited before the trial court within one month from today. Batta payable to the Commissioner and Surveyor shall also be deposited in advance. If not done, the final decree already passed will stand confirmed. The trial court will make every effort to see that the final decree application is disposed of at the earliest, for which specific directions should be issued to the Advocate Commissioner. The Advocate Commissioner will effect division in such a manner as to enable the parties to make use of the plots which may be allotted to them for constructing houses. If necessary, a specific provision can also be made with regard to the way from the road leading to the different plots. This RSA is disposed of as stated above. Sd/- N.K.BALAKRISHNAN, JUDGE. //True Copy// P.A. To Judge Jvt

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