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V.J.Jacob Vs. Xavier

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Court : Kerala

Decided On : Jan-02-2014

Judge : Honourable Mr.Justice P.N.Ravindran

Appellant : V.J.Jacob

Respondent : Xavier

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN THURSDAY, THE2D DAY OF JANUARY201412TH POUSHA, 1935 OP(C).No. 4655 of 2013 (O) ---------- AGAINST THE

ORDER
IN IA22512013 IN OS5002009 OF MUNSIFF'S COURT, KOCHI PETITIONER(S)/PETITIONER/PLAINTIFF IN THE COURT BELOW: ----------

V.J.JACOB, AGED34YEARS, S/O.JOSEPH, VALIYAPARAMBIL HOUSE, KAZHUTHUMUTTU, THOPPUMPADY, KOCHI - 682 005. BY ADVS.SRI.N.RATHEESH SMT.SUMA RATHEESH SRI.S.SREEKUMAR (SR.) RESPONDENT(S)/RESPONDENTS/DEFENDANTS IN THE COURT BELOW: ----------

1. XAVIER SON OF LATE JOSEPH, RESIDING AT KATTIPARAMBIL HOUSE, CC171623, RAMESWARAM VILLAGE, KOCHI TALUK THOPPUMPADY, KOCHI

- 682 005.

2. GRACY JOSEPH, W/O.JOSEY, KATTIPARAMBIL HOUSE, CC171622 RAMESWARAM VILLAGE, KOCHI TALUK, THOPPUMPADY KOCHI - 682 005.

3. ANU K.JOSEY, SON OF LATE JOSEY, KATTIPARAMBIL HOUSE, CC171622 RAMESWARAM VILLAGE, KOCHI TALUK, THOPPUMPADY KOCHI - 682 005.

4. BINU K.JOSEY, SON OF LATE JOSEY, KATTIPARAMBIL HOUSE, CC171622 RAMESWARAM VILLAGE, KOCHI TALUK, THOPPUMPADY KOCHI - 682 005. R1 BY ADV.SRI.SUNIL SHANKER R2 - R4 BY ADV. SRI.R.SUDHISH THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON0201-2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: OP(C).No. 4655 of 2013 (O) ---------- APPENDIX PETITIONER(S)' EXHIBITS ---------- EXT.P1: TRUE COPY OF THE DOCUMENT NO.178/04 DATED91/2004 OF THE KOCHI SUB REGISTRY. EXT.P2: TRUE COPY OF THE PLAINT DATED1412/2009 IN O.S NO.500/2009 OF THE MUNSIFF'S COURT, KOCHI. EXT.P3: TRUE COPY OF THE WRITTEN STATEMENT DATED153/2010 FILED BY THE1T RESPONDENT IN O.S NO.500/2009. EXT.P4: TRUE COPY OF THE COMMISSION APPLICATION DATED221/2001, I.A NO.159/2011, IN O.S NO.500/2009. EXT.P5: TRUE COPY OF THE INTERIM REPORT DATED299/2012 FILED BY THE ADVOCATE COMMISSION IN I.A NO.159/2011 IN O.S NO.500/2009 OF THE MUNSIFF'S COURT, KOCHI. EXT.P6: TRUE COPY OF THE REPORT DATED2810/2013 FILED BY THE ADVOCATE COMMISSION. EXT.P7: TRUE COPY OF THE APPLICATION DATED2810/2013 IN IA NO.2251/2013. EXT.P8: TRUE COPY OF THE OBJECTION DATED2511/2013 IN EXT.P6 EXT.P9: TRUE COPY OF THE APPLICATION DATED2211/2013, I.A NO.2250/2013. EXT.P10: TRUE COPY OF THE COUNTER AFFIDAVIT DATED912/2013 FILED BY THE1T RESPONDENT IN EXT.P7 EXT.P11: TRUE COPY OF THE

JUDGMENT
DATED121/2007 IN O.S NO.15/04 OF THE MUNSIFF'S COURT, KOCHI. EXT.P12: TRUE COPY OF THE

ORDER

DATED1612/2013 IN IA NO.2251/2013 IN OS NO.500/2009 OF THE PRINCIPAL MUNSIFF'S COURT, KOCHI. RESPONDENT(S)' EXHIBITS NIL ---------- /TRUE COPY/ P.A. TO JUDGE VPV P.N.RAVINDRAN, J.

=-=-=-=-=-=-=-=-=-=-=-= O.P.(C)No.4655 of 2013 =-=-=-=-=-=-=-=-=-=-=-=-= Dated this the 2nd day of January, 2014

JUDGMENT

The petitioner is the plaintiff in O.S.No.500 of 2009 on the file of the Court of the Munsiff of Kochi. The respondents are the defendants therein. The suit instituted by the petitioner is one for fixation of the boundaries of the plaint schedule property with the help of a Taluk Surveyor and to put up walls or fences on the boundaries so fixed with the help of an Advocate Commissioner and Amin and if necessary, with the assistance of the police. The petitioner has also prayed for a permanent prohibitory injunction restraining the defendants, their men and agents from trespassing into the plaint schedule property and from interfering with his peaceful possession and enjoyment thereof.

2. The plaint schedule property in O.S.No.500 of 2009 is described as a parcel of land, 10.300 cents in extent, situate in Sy.No.260/3 of Rameswaram Village, Kochi Taluk, Ernakulam District. The petitioner claims title to and possession over the plaint schedule property as per sale deed No.178/2004 of SRO, Kochi executed by Sri.Mathew, S/o.Joseph, who is none other than the O.P.(C)No.4655 of 2013 2 brother of the first defendant. The first defendant as the plaintiff had earlier instituted O.S.No.179 of 2004 in the Court of the Munsiff of Kochi to set aside the aforesaid sale deed on the ground that Sri.Mathew is a mentally ill person and that the document is a forgery. On application filed by the petitioner as I.A.No.159 of 2011 in O.S.No.500 of 2009, an Advocate Commissioner was appointed to measure, demarcate and identify the boundaries of the plaint schedule property on the basis of the document of title and the survey records, with the assistance of the Taluk Surveyor. The Advocate Commissioner thus appointed inspected the plaint schedule properties and submitted Ext.P6 report dated 28.10.2013 accompanied by a sketch. The petitioner thereupon filed Ext.P9 objections as also

I.A.No.2251 of 2013 to remit the said report to the Advocate Commissioner with a direction to submit a fresh report after measuring the plaint schedule property with the assistance of the Taluk Surveyor. The defendants opposed I.A.No.2251 of 2013 in O.S.No.500 of 2009 by filing Ext.P10 counter affidavit. The trial court considered the rival contentions and dismissed I.A.No.2251 of 2013 by Ext.P12 order passed on 16.12.2013. The trial court held that without examining the Advocate Commissioner and the Surveyor who assisted him, the court cannot decide whether there O.P.(C)No.4655 of 2013 3 is any mistake in the plan submitted by the Advocate Commissioner and therefore, the relief prayed for by the petitioner cannot be granted. The said order is under challenge in this original petition filed under Article 227 of the Constitution of India.

3. I heard Sri.S.Sreekumar, learned Senior Advocate appearing for the petitioner, Sri.Sunil Shanker, learned counsel appearing for the first respondent and Sri.R.Sudheesh, learned counsel appearing for respondents 2 to 4. It is evident from a reading of the impugned order that the court below has dismissed the application filed by the petitioner to remit the plan and report to the Advocate Commissioner on the ground that he has not taken steps to examine the Advocate Commissioner and the Surveyor. I.A.No.2251 of 2013 was filed on 22.11.2013, within a month from the date on which the Advocate Commissioner submitted his report. The application was dismissed on 16.12.2013. Since the petitioner had taken prompt steps to have the report and plan remitted to the Advocate Commissioner, I am of the opinion that the court below ought to have afforded him an opportunity to examine the Advocate Commissioner and the Surveyor for the purpose of substantiating his contentions. I am therefore of the considered opinion that the impugned order should be set aside and the court below directed to O.P.(C)No.4655 of 2013 4 reconsider the application after affording the petitioner an opportunity to examine the Advocate Commissioner and the Surveyor. I accordingly allow the original petition, set aside Ext.P12 order dated 16.12.2013 passed by the Court of the Munsiff of Kochi on I.A.No.2251 of 2013 in O.S.No.500 of 2009, restore the said application to file and direct the Court of the Munsiff of Kochi to dispose of the application afresh after affording the petitioner an opportunity to examine the Advocate Commissioner and the Surveyor, expeditiously and in any event within an outer limit of one month from the date of

receipt of a copy of this judgment. Sd/- P.N.RAVINDRAN JUDGE vpv

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