

Thomas V.U. Vs. Jode A.A.

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Court : Kerala

Decided On : Jan-24-2014

Judge : Honourable Mr.Justice N.K.Balakrishnan

Appellant : Thomas V.U.

Respondent : Jode A.A.

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE N.K.BALAKRISHNAN FRIDAY, THE 24TH DAY OF JANUARY 2014 4TH MAGHA, 1935 RSA.No. 1487 of 2013 () ----- AS3842009 of I ADDL.DISTRICT COURT, ERNAKULAM OS8782006 of I ADDL.MUNSIFF COURT, ERNAKULAM ----- APPELLANT(S)/APPELLANT/4TH DEFENDANT :- ----- THOMAS V.U., S/O.THOMAS UTHUPPAN, AGED 63 YEARS, VALOTHIL HOUSE, HOUSE NO.33/2677 SHASTRI LANE, CHALIKKAVATTOM ROAD, PONNURUNNI (EAST) VYTTILA, COCHIN 19 BY ADVS.SRI.BRIJESH MOHAN SMT.RESMI G. NAIR RESPONDENT(S)/RESPONDENTS/PLAINTIFF & DEFENDANTS 1 TO 3:- ----- 1. JOSE A.A., AGED 46 YEARS, S/O.A.X.ANTONY, ARRAKKAL HOUSE CC NO.33/2661/4 SHASTRI LANE, CHALIKKAVATTOM ROAD PONNURUNNI (EAST), VYTTILA, COCHIN 682019.

2. CORPORATION OF KOCHI REPRESENTED BY ITS SECRETARY, ERNAKULAM682011.

3. CORPORATION OF KOCHI, ZONAL OFFICE, VYTTILA JUNCTION REPRESENTED BY ITS ASSISTANT EXECUTIVE ENGINEER682019.

4. THE TOWN PLANNING OFFICER CORPORATION OF COCHIN, ERNAKULAM682011. THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON2401-2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: jvt N.K.BALAKRISHNAN, J.

----- R.S.A. No.1487 of 2013 ----- Dated
this the 24th day of January 2014

JUDGMENT

The 4th defendant is the appellant. A mandatory injunction was granted against him to demolish the temporary construction/shed made on the eastern side of the plaint 'B' schedule property. Besides, the trial court also fixed the western boundary of the plaint 'A' schedule property as stated in the commissioner's sketch. Further, a prohibitory injunction was also granted against the appellant herein from committing any waste or causing obstruction to the peaceful enjoyment of the plaint 'A' schedule property. The appeal filed against the same was dismissed.

2. Learned Senior Counsel appearing for the appellant has vehemently argued that the appellant had moved the Tribunal for Local Self Government against the order passed under Sec.406 of the Kerala Municipality Act R.S.A. No.1487 of 2013 -:

2. :- and pursuant thereto the matter was remanded for fresh consideration by the first defendant - Corporation. It is further submitted that since the matter was remanded by the Tribunal, which is chaired by a District Judge, the learned Munsiff should have in propriety waited for the decision of the Tribunal but the suit was disposed of post- haste.

3. The Advocate Commissioner who inspected the property filed a report and Ext.C1(a) plan. With regard to the fixation of the boundary there can be no dispute. The only other question was with regard to the direction sought for the removal of the temporary shed in the property adjacent to the plaintiff's property, which according to the plaintiff, was constructed in violation of the provisions of the Municipalities Act. The appellant could not produce any document to show that the construction was done with a valid licence. The argument that the learned Munsiff should have waited for the decision of the Tribunal also cannot be accepted since it is ultimately the civil court which has to R.S.A. No.1487 of 2013 -:

3. :- decide the issue involved in the matter. The plaintiff was not a party to the proceedings pending before the Tribunal. Even if it is accepted that the proceedings were initiated by the Corporation at the instance of the first respondent/ plaintiff, that will not in any way affect the maintainability of the suit.

4. Learned Senior Counsel has also placed reliance on the decision of this Court in Noushad v. Kayamkulam Municipality [2006 (2) KLT319 in support of his submission that the Municipality (Municipal Corporation) enjoys the authority to grant permission for construction of a building and approval of plan for construction and it can impose the nature of use of building. So far as the case on hand is concerned, the plaintiff was not a party to the other proceedings. He is not questioning the jurisdiction of the authorities under the Municipalities Act but his only grievance was that the unauthorised construction which invades his (plaintiff's) right should be removed. The courts below have analysed the evidence in the correct R.S.A. No.1487 of 2013 -:

4. :- perspective and has come to the right conclusion. No substantial question of law arises for consideration in this RSA. It is hence, dismissed. Sd/- N.K.BALAKRISHNAN, JUDGE. /true copy/ P.A. To Judge Jvt

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