

Sarakumari Vs. Mohanakumar

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Court : Kerala

Decided On : Jan-30-2014

Judge : Honourable Mr.Justice S.S.Satheesachandran

Appellant : Sarakumari

Respondent : Mohanakumar

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE
HONOURABLE MR.JUSTICE S.S.SATHEESACHANDRAN THURSDAY,
THE 30TH DAY OF JANUARY 2014 10TH MAGHA, 1935 FAO.No. 261 of 2013 ()
----- AGAINST THE

ORDER

IN IA NO. 1098/13 IN AS NO. 40/2013 OF SUB COURT, NEYYATTINKARA
===== APPELLANT/IST RESPONDENT:
----- SARAKUMARI, AGED 56 YEARS W/O
SWAMIDAS, KOLLANDEVILA VEEDU, ATHIMOODU ARUMANOOR, POOVAR
P.O, THIRUVANANTHAPURAM-695032 BY ADV. SRI.PIRAPPANCODE
V.S.SUDHIR RESPONDENTS/APPELLANTS & 2ND RESPONDENT:
----- 1. MOHANAKUMAR,
S/O MADHAVAN PILLAI MANNINAKAM, KALAITHOTTOM ARUMANOOR,
POOVAR P.O THIRUVANANTHAPURAM-695 032 2. ANITHA KUMARI, W/O
MOHANAKUMAR MANNINAKAM, KALLAITHOTTOM ARUMANOOR, POOVAR

P.O THIRUVANANTHAPURAM-695 032 3. AJITH KUMAR, S/O MALLAN PILLAI
MANNINAKAM, KALAYITHOTTOM ARUNANNOOR, POOVAR P.O.
THIRUVANANTHAPURAM-695 032 THIS FIRST APPEAL FROM

ORDER

S HAVING BEEN FINALLY HEARD ON 3001-2014, THE COURT ON THE SAME
DAY DELIVERED THE FOLLOWING: SD S.S. SATHEESACHANDRAN, J.,
----- F.A.O.No.261 OF2013-----

Dated this the 30th day of January, 2014

JUDGMENT

Appellant is the first respondent in A.S.No.40/2013 on the file of Sub Court, Neyyattinkara. The above appeal A.S.No. 40/2013 was filed by respondents 1 and 2, defendants in O.S.No. 412/2012, against the decree and judgment passed in that suit by learned First Additional Munsiff, Neyyattinkara. Suit filed by appellant with the third respondent as co-plaintiff was in respect of 2 cents of land seeking decree of injunction both mandatory and prohibitory and also for putting up boundary. Plaint schedule property, 2 cents, as per the deed taken by plaintiffs showed that the sale was for enabling them to use that land for motorable access to their property situate on the western side of a pathway. Thought it was purchased for such use, they carried agricultural activities in that property and there was threat of trespass over such property from defendants, was the case set up to claim decree of injunction and putting up boundary. Defendants resisted the suit contending that the plaint schedule property F.A.O.No. 261/2013 2 formed part of a pathway and they have been in enjoyment and use of that pathway. They contended that plaintiffs have no right to seek the decrees applied for. After filing of commission report in the suit plaintiffs had withdrawn the decree applied for mandatory injunction, which was sought for demolishing a compound wall put up by defendants. Commissioner after taking measurements has reported that the above compound wall formed part of the property of defendants. On the materials placed including the commission report and plan collected, learned munsiff granted the plaintiffs decree of prohibitory injunction and also for putting up boundary on the western boundary of the plaint property separating it from the pathway.

2. Decree granted to plaintiffs in the suit was challenged by defendants preferring the appeal, in which an application was moved by them seeking an order of injunction restraining plaintiff from making any constructions/obstructions within the plaint property till disposal of the appeal. Plaintiffs filed objection to that petition and after hearing both sides, learned sub judge has passed an order partly allowing application of the defendants, F.A.O.No. 261/2013 3 and it is challenged in this appeal.

3. Though notice was given, respondents/defendants have not entered appearance, I heard learned counsel for appellant.

4. Learned sub judge has passed the order impugned overlooking the limited relief canvassed by respondents in their application, and what has been granted is something which was not even asked for by them, is the submission of counsel. By the impugned order learned sub judge has directed the plaintiff not to make any obstruction to the appellants in using the plaint schedule property for ingress and egress to their property, which was not asked in the application moved, submits the counsel. Trial court after meticulously considering the materials tendered with reference to the pleadings of parties upheld the claim of plaintiff and no justifiable ground existed to stall the execution of decree passed in favour of the plaintiff, is the further submission of counsel.

5. After looking into the materials produced with the memorandum of appeal, which include judgment of trial court and also the application moved by defendants before the F.A.O.No. 261/2013 4 appellate court and objections thereto by the plaintiffs, and, also perusing the Order of learned sub judge, I find challenge against the Order must fail. To avoid any prejudice being caused to appellants, I refrain from advertng to the issues involved in the appeal challenging the decree passed by the trial court. However, it has to be pointed out the description of plaint schedule property and facts and circumstances presented in the case would show that it is lying contiguously with a pathway situate on its western side. When that be so, at this stage, status quo has to be preserved till the appeal is heard and disposed of on its merits. I do not find anything wrong with the view taken by learned sub judge that where the plaint property lies contiguously with the pathway

there should not be any obstruction to use of that property for ingress and egress by the defendants to their property. However, I make it clear that the appeal has to be disposed of by learned sub judge untrammelled by any of the observations made in his Order and the judgment of this Court against that Order. Appeal has to be disposed on its merits appreciating the pleadings and materials produced in F.A.O.No. 261/2013 5 accordance with law, as expeditiously as possible, after affording reasonable opportunity to both sides to present their case. Subject to the above directions, appeal is dismissed. Sd/- S.S. SATHEESACHANDRAN JUDGE
sd // True Copy // P.A. to Judge

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