

Benjamin Samuel Vs. Antony Leo

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Court : Kerala

Decided On : Feb-28-2014

Judge : Honourable Mr. Justice V. Chitambaresh

Appellant : Benjamin Samuel

Respondent : Antony Leo

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE V. CHITAMBARESH FRIDAY, THE 28TH DAY OF FEBRUARY 2014 9TH PHALGUNA, 1935 OP(C). No. 611 of 2014 (O) ----- IN IA NO. 2693/2013 IN OS 378/2012 of MUNSIF COURT, PERUMBAVOOR PETITIONER(S): ----- 1. BENJAMIN SAMUEL, AGED 56 YEARS S/O. LATE CHERIAN SAMUEL, BUSINESS EXECUTIVE RESIDING AT PEEDIYAKKAL HOUSE, INDUSTRIAL NAGAR P.O. CHETIPUZHA VILLAGE, CHANGANASSERY-686 101 KOTTAYAM DISTRICT REPRESENTED BY HIS POWER OF ATTORNEY HOLDER SAMUEL PEEDIYAKKAL AGED 59 YEARS, S/O. CHERIAN SAMUEL, RESIDING AT PEEDIYAKKAL HOUSE KUNNU ROAD, ANGAMALY, ERNAKULAM-683 572.

2. THOMAS ANTONY AGED 54 YEARS S/O. THOMAS THOMAS, BUSINESS EXECUTIVE RESIDING AT MULAKUPPADAM HOUSE INDUSTRIAL NAGAR P.O., CHETIPUZHA VILLAGE CHANGANASSERY-686 101, KOTTAYAM DISTRICT REPRESENTED BY HIS POWER OF ATTORNEY HOLDER SAMUEL

PEEDIYAKKAL, AGED 59 YEARS S/O. CHERIAN SAMUEL, RESIDING AT PEEDIYAKKAL HOUSE KUNNU ROAD, ANGAMALY, ERNAKULAM-683 572. BY ADVS.SRI.V.V.SIDHARTHAN (SR.) SRI.D.G.VIPIN SRI.KAROL MATHEWS SEBASTIAN ALENCHERRY RESPONDENT(S): ----- ANTONY LEO, AGED 68 YEARS S/O. LATE K.X.XAVIER, KUNUKKASSERIL HOUSE, 39/6671 ALAPPAT CROSS ROAD, KOCHI-682 015. THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 28.02.2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: OP(C).No. 611 of 2014 (O) APPENDIX PETITIONER(S)' EXHIBITS EXHIBIT P1 : CERTIFIED COPY OF POWER OF ATTORNEY DTD.28.3.2013 EXECUTED BY PETITIONERS IN FAVOUR OF SAMUEL PEEDIYAKKAL. EXHIBIT P2 : COPY OF THE PLAINT IN OS37812 OF THE MUNSIF'S COURT, PERUMBAVOOR. EXHIBIT P3 : COPY OF THE WRITTEN STATEMENT FILED BY THE PETITIONERS (DEFENDANTS) IN OS3782012 OF THE MUNSIF'S COURT, PERUMBAVOOR. EXHIBIT P4 : COPY OF THE PLAINT IN OS9612 OF THE SUB COURT, PERUMBAVOOR. EXHIBIT P5(a) : COPY OF THE WRITTEN STATEMENT FILED BY THE 1ST DEFENDANT IN OS9612 OF THE SUB COURT, PERUMBAVOOR. EXHIBIT P5(b) : COPY OF THE WRITTEN STATEMENT FILED BY THE 2ND DEFENDANT IN OS9612 OF THE SUB COURT, PERUMBAVOOR. EXHIBIT P5(c) : COPY OF THE WRITTEN STATEMENT FILED BY THE 3RD DEFENDANT IN OS9612 OF THE SUB COURT, PERUMBAVOOR. EXHIBIT P6 : COPY OF IA179812 FILED BY THE RESPONDENT (PLAINTIFF) IN OS9612 OF THE SUB COURT, PERUMBAVOOR. EXHIBIT P7 : COPY OF THE OBJECTION TO EXT.P6 FILED BY THE PETITIONERS. EXHIBIT P8 : COPY OF THE

ORDER

DTD.29.11.2012 IN IA179812 IN OS9612 OF THE SUB COURT, PERUMBAVOOR. EXHIBIT P9 : COPY OF THE DECREE DTD.28.11.2012 IN OS9612 OF THE SUB COURT, PERUMBAVOOR. EXHIBIT P9(a) : COPY OF THE

JUDGMENT

DTD.28.11.2012 IN OS9612 OF THE SUB COURT, PERUMBAVOOR. EXHIBIT P10(a): COPY OF THE LIST OF DOCUMENTS DTD.28.3.2013 FILED BY THE

DEFENDANTS IN OS3782012 OF THE MUNSIFF'S COURT, PERUMBAVOOR. EXHIBIT P10(b): COPY OF THE ADDITIONAL LIST OF DOCUMENT DTD.16.1.2014 FILED BY THE DEFENDANTS IN OS37812 OF THE MUNSIFF'S COURT, PERUMBAVOOR. EXHIBIT P11 : COPY OF IA269313 IN OS NO.378/12 FILED BY THE DEFENDANTS (PETITIONERS) BEFORE THE MUNSIFF'S COURT, PERUMBAVOOR. EXHIBIT P12 : COPY OF THE OBJECTIONS FILED BY THE RESPONDENT IN IA269313 IN OS37812 BEFORE THE MUNSIFF'S COURT, PERUMBAVOOR. EXHIBIT P13 : CERTIFIED COPY OF THE

ORDER

DTD.12.2.2014 IN IA269313 IN OS37812 OF THE MUNSIFF'S COURT, PERUMBAVOOR. RESPONDENT(S)' EXHIBITS : NIL V. CHITAMBARESH, J
----- OP(C) NO. 611 OF2014----- Dated
this the 28th day of February, 2014

JUDGMENT

Whether the plaintiff has got cause of action to file the present suit (O.S. No. 378/2012) has to be tested on the basis of evidence. The impact of the earlier suit (O.S. No. 96/2012) being withdrawn has also to be considered by the court below finally. No ground sufficient enough to dismiss the suit at the threshold is made out. The court below has correctly held that the plaint cannot be rejected and that the parties have to enter into evidence to decide the lis. I do not find any error of jurisdiction in the order impugned. The Original Petition is dismissed. V. CHITAMBARESH JUDGE ncd

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