

John Vs. Chakkoru @ Jacob

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Court : Kerala

Decided On : May-27-2014

Judge : Honourable Mr.Justice T.R.Ramachandran Nair

Appellant : John

Respondent : Chakkoru @ Jacob

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR & THE HONOURABLE SMT. JUSTICE P.V.ASHA TUESDAY,THE27H DAY OF MAY20146TH JYAISHTA, 1936 RFA.No. 80 of 2012 () ----- APPELLANT(S) (RESPONDENTS1TO6LEGAL REPRESENTATIVES OF DEFENDANT):

1. JOHN S/O.LATE PALU, CHALISSERY HOUSE KIZHAKKEKOTTA VATHUKKAL, THRISSUR-680609.

2. JOSE, S/O.LATE PALU, CHALISSERY HOUSE KIZHAKKEKOTTA VATHUKKAL, THRISSUR-680609.

3. KOCHUMARY D/O.LATE PALU, CHALISSERY HOUSE KIZHAKKEKOTTA VATHUKKAL, THRISSUR-680609.

4. THRESSIAMMA D/O.LATE PALU, CHALISSERY HOUSE KIZHAKKEKOTTA VATHUKKAL, THRISSUR-680609.

5. BENNY S/O.LATE PALU, CHALISSERY HOUSE KIZHAKKEKOTTA VATHUKKAL, THRISSUR-680609.

6. SHEENA D/O.LATE PALU, CHALISSERY HOUSE KIZHAKKEKOTTA VATHUKKAL, THRISSUR-680609. BY ADVS.SRI.D.KRISHNA PRASAD SMT.O.K.SANTHA SMT.S.SANTHY RESPONDENT(S) (PETITIONER AND7H RESPONDENT/PLAINTIFFS):

----- 1.
CHAKKORU @ JACOB S/O.CHALISSERY VATTAN LONAPPAN, SOUTH ANCHERY KUTTANELLUR, THRISSUR-680609.

2. KURIAKKOSE S/O.CHALISSERY VATTAN LONAPPAN, ROSE GARDEN, PERINGAVU THRISSUR-680609. R2 BY ADV. SMT.PRABHA R.MENON R1 BY ADV. SRI.VIVEK VARGHESE P.J.

R1 BY ADV. SRI.VARUGHESE M EASO THIS REGULAR FIRST APPEAL HAVING BEEN FINALLY HEARD ON2705- 2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: SKV T.R.RAMACHANDRAN NAIR & P.V ASHA, JJ.

----- R.F.A No.80 of 2012-H
----- Dated this the 27th day of May , 2014

JUDGMENT

Ramachandran Nair, J.

This appeal is filed by respondents 1 to 6 in I.A.No.7476 of 2009 in O.S.No.140 of 1978 on the file of the 1st Additional Sub Court, Thrissur.

2. The facts of the case in brief are as follows. By the impugned order the court below directed that, item No.3 of the decree schedule property will be auctioned among the sharers and it will be allotted to the successful bidder.

3. We heard the learned counsel for the appellant Sri D.Krishna Prasad and the learned Senior Counsel for the 1st respondent Sri Jacob Varghese and Smt. Prabha R.Menon for the 2nd respondent.

4. A reading of the order passed by the court below will show that, as the reports of the Advocate Commissioner and the Expert Commissioner state that the property cannot be divided by metes and bounds, the court below took the view to auction the decree schedule property among all the sharers and allot the same to the successful bidder. The learned counsel for the R.F.A No.80 of 2012-H2appellants sought our attention to the report of the Commissioner. It is submitted further that in the light of the order in C.R.P No.2935/1983 passed by this Court, the question whether the "Grand Lodge" can be treated as part of the partnership assets will have to be decided by the court below and therefore the impugned order cannot be sustained.

5. The learned Senior Counsel for the 1st respondent Sri Jacob Varghese submitted that as far as the order in question is concerned, in view of the order passed by this Court in C.R.P No.2935/1983 the order passed in I.A.No.1357 of 1982 in O.S.No.125 of 1978 has no bearing on the issue herein.

6. From a perusal of the report of the Commissioner, it is seen that the Commissioner after detailed consideration of the facts and circumstances, reported before the court in para.6 that item No.3 of the decree schedule property cannot be divided into three shares ($\frac{2}{3}$ to the petitioners and $\frac{1}{3}$ to the respondents) by metes and bounds and the next option is to auction the property with the shop room and building amongst the sharers. The report of the expert commissioner which was placed before us by the learned counsel for the appellants concurs with the above. Therefore, we find no reason to interfere with the impugned order. R.F.A No.80 of 2012-H37. The learned counsel for the appellants further submits that a review petition has been filed by the 1st respondent herein before the court below pointing out that, before conducting the auction, upset price will have to be fixed. It is submitted that the defect pointed out by the review petitioner is material.

8. Having considered the rival contentions on the crucial issue, we concur with the finding of the court below that item No.3 of the decree schedule property cannot be divided by metes and bounds. The said conclusion is well supported by the report of the Commissioner and expert commissioner.

9. With regard to the contention, regarding the fixing of upset price, the same can be considered by the court below before fixing a fresh date for auction. With the above observations, the appeal is dismissed. Sd/- (T.R.RAMACHANDRAN NAIR, JUDGE) Sd/- (P.V.ASHA, JUDGE) rtr/ /true copy/ P.S to Judge

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