

Shibi Vs. P.Dileepkumar

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Court : Kerala

Decided On : Jun-23-2014

Judge : Honourable Mr.Justice Thomas P.Joseph

Appellant : Shibi

Respondent : P.Dileepkumar

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE THOMAS P.JOSEPH MONDAY, THE 23D DAY OF JUNE 2014 2ND ASHADHA, 1936 RP.No. 320 of 2014 () IN RSA.1353/2012 ----- AGAINST THE

JUDGMENT

IN RSA13532012 of HIGH COURT OF KERALA DATED 12-11-2012 REVIEW PETITIONERS/APPELLANTS: ----- 1. SHIBI AGED 41 YEARS W/O. LANE KARTHIKEYAN, RESIDING AT MUKULATH PARAMBIL EDATHALA, POOKKATTUPADY, PIN 683562.

2. RADHIKA AJITHKUMAR, AGED 39 YEARS W/O. K.B. AJITH KUMAR, AKHIL NIVAS, ETTUTHYKKAL UDAYAMPEROOR PO, MANAKUNNAM VILLAGE, PIN 682307 NOW RESIDING AT POMUKHAM HOUSE, KARURTHIL ROAD NADAKKAV, UDAYAMPEROOR PO, 682 307 BY ADVS. SRI. N. SUBRAMANIAM SRI. A. M. NASEER SRI. M. S. NARAYANAN RESPONDENTS/RESPONDENTS:

----- 1. P.DILEEPPKUMAR S/O.PADMANABHAMENON , GOKULAM, KARURUTHIL ROAD UDAYAMPEROOR NOW RESIDING AT DOOR NO. IX459OF TRIPUNITHURA MUNICIPALITY PALLICHAKKALACKAL LANE, EROOR SOUTH, TRIPUNITHURA ERNAKULAM DISTRICT, PIN682306 2. RAFAEEK PROPRIETOR, N.B.STORES, POOKKATTUPADY JN. (VIA), PERUMBAVOOR, ERNAKULAM DISTRICT PIN683561. R1 BY ADV. SRI.DINESH R.SHENOY R-R2 BY ADV. SMT.AYSHA YOUSEFF R-R2 BY ADV. SRI.V.K.SIDHIQUE R-R2 BY ADV. SMT.SAJITHA SIDHIK THIS REVIEW PETITION HAVING BEEN FINALLY HEARD ON2306-2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: RP.No. 320 of 2014 () IN RSA.1353/2012 APPENDIX ANNEXURE A : WRITTEN STATEMENT FILED BY1T DEFENDANT IN O.S.NO.939 OF 2012 ANNEXURE B : SURVEY PLAN PREPARED BY SUPERINTENDENT OF SURVEY AND LAND RECORDS ERNAKULAM IN O.S.NO.939 OF 2012 IN THE PRESENCE AND AS PER DIRECTION OF ADVOCATE COMMISSIONER. ANNEXURE C : SURVEY PLAN PREPARED BY SUPERINTENDENT OF SURVEY AND LAND RECORDS ERNAKULAM IN O.S.NO.939 OF 2012 IN THE PRESENCE AND AS PER DIRECTION OF ADVOCATE COMMISSIONER. True Copy P A to Judge THOMAS P.JOSEPH, J.

===== R.P.No.320 of 2014 in R.S.A.No.1353 of 2012
===== Dated this the 23rd day of June, 2014

ORDER

This application is to review the judgment dated 12.11.2012 in R.S.A.No.1353 of 2012 whereby the judgment and decree of the learned second Additional Sub Judge, Ernakulam in A.S.No.9 of 2012 was confirmed.

2. The main grounds for review are that the petitioners do not have any access to the plaint C schedule and that the judgment and decree of this Court stands in the way of petitioners gaining access through plaint A schedule. There is also a contention that records in O.S.No.939 of 2012 filed by the petitioners would not justify the grant of decree in favour of the respondents.

3. Learned counsel for the petitioners has made a fervent plea to reopen the judgment and decree of this Court on the grounds aforesaid.
4. I have heard the learned counsel for the respondents as well.
5. So far as the challenge made to the judgment and decree on the strength of the documents in O.S.No.939 of 2012 is concerned, I must notice that O.S.No.288 of 2007 was for a decree R.P.No.320 of 2014 in R.S.A.No.1353 of 2012 2 for prohibitory injunction against trespass into the plaint A schedule. This Court observed in the judgment sought to be reviewed in paragraph 17 that in the light of what is stated in the judgment it is not necessary for this Court to go into the question of title claimed by the petitioners over the disputed portion of plaint A schedule. It is also observed that the second appeal is dismissed without prejudice to the right if any of the petitioners to seek relief on the strength of the title they claimed. As such, a review of the judgment and decree based on the records in O.S.No.939 of 2012 relied by the petitioners is not necessary or warranted.
4. The next is concerning the difficulty of the petitioners and more particularly, the second petitioner for access to the plaint C schedule. Learned counsel has submitted that the second petitioner and her children are not able to enter the plaint C schedule.
5. The second petitioner is a pendente lite purchaser. It is seen from paragraph 16 of the judgment sought to be reviewed that while hearing the second appeal, a plea was made to provide some access to the plaint C schedule through the plaint A schedule. This Court, in paragraph 16 of the judgment considered the above request and found that since the second R.P.No.320 of 2014 in R.S.A.No.1353 of 2012 3 petitioner is a pendente lite transferee, no equitable relief could be granted to her in this case. This Court has also stated the reason for taking that view. There is no reason why that finding should be reviewed. A review should come within the limited scope of Rule 1 of Order 47 of the Code of Civil Procedure. It is neither an appeal nor an opportunity to re-hear the appeal. I do not find any justifiable reason to review the judgment of this Court. In the light of that, request for review cannot be entertained. The application is dismissed subject to whatever that is stated in the judgment dated 12.11.2012 in R.S.A.No.,1353 of 2012. Sd/-

THOMAS P.JOSEPH, JUDGE. Sbna

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