

Asariyottu Jose Vs. Asariyottu Devassia

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SooperKanoon Citation : sooperkanoon.com/1154476

Court : Kerala

Decided On : Jul-02-2014

Judge : Honourable Mr.Justice V.Chitambaresh

Appellant : Asariyottu Jose

Respondent : Asariyottu Devassia

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE V.CHITAMBARESH WEDNESDAY, THE 2D DAY OF JULY 2014 11TH ASHADHA, 1936 OP(C).No. 503 of 2014 (O) ----- (AGAINST THE

ORDER

IN O.S.NO.197/1994 OF MUNSIFF MAGISTRATE COURT, MANANTHAVADY.) PETITIONER(S): ----- ASARIYOTTU JOSE S/O. LATE VARKEY, ASARIYOTTU HOUSE, P.O.EDAVAKA EDAVAKA AMSOM DESOM, WAYANAD DISTRICT. BY ADVS.SRI.KRISHNA PRASAD. S SRI.B.SIBI RESPONDENT(S): ----- ASARIYOTTU DEVASSIA S/O. LATE VARKEY, ASRIYOTTU HOUSE, P.O.EDAVAKA EDAVAKA AMSOM DESOM, WAYANAD DISTRICT-670645. R BY ADV. SRI.GRASHIOUS KURIAKOSE (SR.) R BY ADV. SRI.GEORGE MATHEWS THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 02-07-2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: OP(C).No. 503 of 2014 (O) ----- APPENDIX

PETITIONER(S)' EXHIBITS ----- EXHIBIT P1- A TRUE COPY OF THE PLAINT DATED 31-7-1994 FILED AS O.S.NO. 197 OF 1994 BEFORE THE MUNSIF MAGISTRATE COURT, MANANTHAVADY. EXHIBIT P2- A TRUE COPY OF THE WRITTEN STATEMENT DATED 13-3-1995 FILED BY THE DEFENDANT IN O.S.NO. 197 OF 1994 BEFORE THE MUNSIF MAGISTRATE COURT MANANTHAVADY. EXHIBIT P3- A TRUE COPY OF THE INTERIM REPORT SUBMITTED BY THE ADVOCATE COMMISSIONER DATED 20-9-1994 IN O.S.NO. 197 OF 1994 BEFORE THE MUNSIF MAGISTRATE COURT, MANANTHAVADY. EXHIBIT P4- THE FINAL REPORT SUBMITTED BY THE ADVOCATE COMMISSIONER DATED 15-9-1998 IN O.S.NO. 197 OF 1994 BEFORE THE MUNSIF MAGISTRATE COURT, MANANTHAVADY. EXHIBIT P5- THE PLAN SUBMITTED BY THE ADVOCATE COMMISSIONER DATED 15-9-1998 IN O.S.NO. 197 OF 1994 BEFORE THE MUNSIF MAGISTRATE COURT MANANTHAVADY. EXHIBIT P6- A TRUE COPY OF THE DECREE PASSED IN O.S.NO. 197 OF 1994 BEFORE THE MUNSIF MAGISTRATE COURT MANANTHAVADY DATED 3-7-2001. EXHIBIT P7- A TRUE COPY OF THE

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PASSED IN O.S.NO. 197 OF 1994 BEFORE THE MUNSIF MAGISTRATE COURT MANANTHAVADY DATED 3-7-2001. EXHIBIT P8- A TRUE COPY OF THE EXECUTION PETITION NUMBERED AS E.P.NO. 20 OF 2011 IN O.S.NO. 197 OF 1994 DATED 20-7-2011. EXHIBIT P9- A TRUE COPY OF THE E.A.NO. 31 OF 2013 IN E.P.NO. 20 OF 2011 IN O.S.NO. 197 OF 1994 DATED 23-9-2013. EXHIBIT P10- A TRUE COPY OF THE E.A.NO. 32 OF 2013 IN E.P.NO. 20 OF 2011 IN O.S.NO. 197 OF 1994 DATED 23-9-2013. EXHIBIT P11- A TRUE COPY OF THE OBJECTION FILED IN E.P.NO. 20 OF 2011 IN O.S.NO. 197 OF 1994 DATED 23-9-2013. EXHIBIT P12- A TRUE COPY OF THE

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PASSED IN I.A.NO. 32 OF 2013 IN E.P.NO. 20 OF 2011 IN O.S.NO. 197 OF 1994 DATED 9-12-2013. EXHIBIT P13- A TRUE COPY OF THE

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PASSED IN E.A.NO. 31 OF 2013 IN E.P.NO. 20 OF 2011 IN O.S.NO. 197 OF 1994 DATED 201-2014. RESPONDENT(S)' EXHIBITS : NIL.
----- //TRUE COPY// P.S. TO JUDGE. V.CHITAMBARESH, J.

----- O.P (C) No.503 of 2014 ----- Dated this the 2nd day of July, 2014

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It is trite law that a decree for fixation of boundaries can be executed by erecting a fence or compound wall along the boundaries. But the decree in the instant case is one for injunction simplicitor and is extracted herein below:- "That the defendant or his men are restrained from trespassing into plaintiff 'C' schedule property, altering the boundary of the property, committing any act of waste in the property by way of perpetual injunction." 2. The decree of the above nature can be executed by resort to Order XXI Rule 32 of the Code of Civil Procedure. The court below has by order dated 14.8.2013 directed delivery with police aid to ensure possession of the property by the decree holder. E.A.No.31/2013 filed for review has been dismissed by the order impugned observing as follows:- "The apprehension of the applicant is that the attempt of the respondent in execution petition is to execute decree beyond the scope of the decree. Needless to say that neither executing Court nor Amin cannot go beyond the decree. Therefore, the O.P (C) No.503 of 2014 2 apprehension expressed by the applicant in this regard has no basis." 3. Thus the court below has cautioned itself that it cannot go beyond the decree while surging ahead with the execution proceedings. The court below shall understand the purport and import of the decree for injunction simplicitor as afore-stated. I hasten to add that the decree holder cannot construct a fence or a compound wall along the boundary of the property in execution of the decree for injunction. This judgment does not however disable the decree holder from constructing a compound wall, if he is otherwise entitled to do so. The Original Petition is disposed of. Sd/- V.CHITAMBARESH, Judge. nj.