

K.Devi and Others Vs. Kalliani Amma and Others

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Court : Kerala

Decided On : Jul-17-2014

Judge : Honourable Mr. Justice B.Kemal Pasha

Appellant : K.Devi and Others

Respondent : Kalliani Amma and Others

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE B.KEMAL PASHA THURSDAY, THE 17TH DAY OF JULY 2014 26TH ASHADHA, 1936 RFA.No. 528 of 2010 () -----
AGAINST THE

ORDER

/

JUDGMENT

IN F.D.I.A.No.263/97 in OS991977 of SUB COURT, VATAKARA DATED 31-03-2010 APPELLANT(S)/RESPONDENTS 14,6-12 DEFENDANTS.1-4,6-9 & LRSOF5H DEFENDANT.:

----- 1.
K.DEVI AND OTHERS, D/O RAMAN NAIR, RESIDING AT H/92 G2 TNHB, RESIDENTS COMPLEX, 1 SEAWARD ROAD VALMIKI NAGAR, THIRUVANCHIYUR, CHENNAI-600 041.

2. K.SANTHA, D/O.RAMAN NAIR, RESIDING AT2362(9 G)1ST MAIN, ROAD THILAGAR AVENUE, BALAIAH GARDEN, VELACHERY CHENNAI-600 091.
3. K.GOPINATHAN,S/O.RAMAN NAIR, RESIDING AT20315 KAMALAKSHI FLATS, KUTCHERY ROAD, MYLAPORE CHENNAI-600 004.
4. K.PRABHAKARAN,S/O.RAMAN NAIR,RESIDING AT2452 ROSARY CHURCH II LANE, MOON LIGHT APRTMENT MYLAPORE, CHENNAI-600 004.
5. K.PREMALATHA, D/O.RAMAN NAIR RESIDING AT1115 UNION CARBIDE COLONY HOUSING BOARD, JAMEEN PALLAVARAM, CHENNAI-600043
6. K.CHANDRASEKHARAN, S/O.RAMAN NAIR RESIDING AT301THIRUNEERMALAI ROAD, BASHYAM NAVARATHNA, APARTMENT "PEARL"BLOCK II FLOOR E, CHENNAI-600 044.
7. K.SUSHEELA,D/O.RAMAN NAIR, RESIDING AT170, GNANAMANI STREET, S.M.BLOCK ASHOK NAGAR, CHENNAI-600 083.
8. K.SATHYANATHAN,S/O.RAMAN NAIR, RESIDING AT169 6TH STREET, R.V.NAGAR KODUNGALIYUR, CHENNAI-600 118.
9. GEETHA,W/O.PURUSHOTHAMAN,NO.172,7TH CROSS, NEW BAYAPPANAHALLI, BANGALORE-560 038. RFA5282010 -2- 10. PRADEEP,S/O.PURUSHOTHAMAN, RESIDING AT -DO- -DO- 11. VIDHYA, D/O.PURUSHOTHAMAN RESIDING AT -DO- -DO- BY ADV. SRI.M.GOPIKRISHNAN NAMBIAR

RESPONDENT(S)/PETITIONERS(PLAINTIFFS):

----- 1. KOTTERIYIL THAMASIKKUM ERAVATH KANAPRAVAN KALLIANI AMMA , W/O.RAMAN NAIR CHORODE AMSOM DESOM, PO.CHORODE-673 106, VATAKARA KOZHIKODE DISTRICT.

2. GANGADHARAN, S/O.KANAPRAVAN KALLIANI AMMA, KOTTERIYIL HOUSE CHORODE AMSOM DESOM, PO.CHORODE-673 106, VATAKARA KOZHIKODE DISTRICT.

3. RAVEENDRAN, S/O.KANAPRAVAN KALLIANI AMMA RESIDING AT -DO- -DO- 4. USHA, D/O.KANAPRAVAN KALLIANI AMMA RESIDING AT -DO- -DO- 5. REMA, D/O.KANAPRAVAN KALLIANI AMMA, RESIDING AT -DO-, -DO- 6. SEETHA, D/O.KANAPRAVAN KALLIANI AMMA RESIDING AT -DO- -DO- R1-R6 BY ADV. SRI.K.MOHANAKANNAN R1-R6 BY ADV. SMT. A.R. PRAVITHA & SMT. ZOHARA. THIS REGULAR FIRST APPEAL HAVING BEEN FINALLY HEARD ON 17-07-2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: B.KEMAL PASHA, J.

..... R.F.A. No. 528 of 2010
..... Dated this the 17th day of July, 2014

JUDGMENT

Defendants in O.S.No.99/1977, who are the respondents in FDIA No.263/97 of the Subordinate Judge's Court, Vatakara has come up in appeal, challenging the impugned final decree passed by the court below.

2. The suit has a chequered career. The plaintiffs had filed the suit claiming 6/15 shares out of the plaint schedule properties. Two other suits were also pending between the parties. O.S.No.38/70 was a suit for recovery of possession filed by the appellants herein against the plaintiffs in respect of item No.1 in plaint A schedule properties in O.S.No.99/77. O.S.No.39/76 was filed by the appellants seeking a partition in respect of item No.1 in R.F.A.528 of 2010 :-

2. :- plaint A schedule property of O.S.No.99/77. Initially the court below dismissed O.S.No.99/77 on which the plaintiffs filed an appeal before this Court as A.S.No.70/80. The appeal was also dismissed by this Court finding that the plaintiffs are not entitled to shares in the properties, as they have no right of inheritance. Challenging the said finding, the plaintiffs went up to the Apex Court and filed Civil Appeal No.5475/95. The appeal was admitted and subsequently allowed. The Apex Court has decreed O.S.No.99/77.

3. Thereafter, an application for final decree was filed as FDIA26397 by the plaintiffs before the court below. A Commissioner was deputed for carrying out

partition by metes and bounds. It has come out that the plaint A schedule properties are situated at Vatakara and nearby places, in Kerala, and plaint B schedule properties are situated at Mylapore and surrounding places in Chennai, in the State of Tamil Nadu. The plaint C schedule items are certain movable properties. It has ultimately come out that R.F.A.528 of 2010 -:

3. :- plaint C schedule items are not available for partition. Therefore, the partition at present is confined to plaint A schedule properties and B schedule properties only. Similarly, as far as item No.4 of plaint A schedule property is concerned, it was found that the said property is not available for partition.

4. By taking note of the fact that the appellants are residents of Chennai, the Commissioner as well as the court below have decided to allot portions of properties set out in B schedule alone to the appellants as their shares. Therefore, the shares allotted to the appellants are confined to the properties located in Chennai alone. It seems that no shares have been allotted to the appellants from plaint A schedule item Nos.1 to 3 and 5. Aggrieved by the said allotment in the final decree, the defendants have come up in appeal.

5. Heard the learned counsel for the appellants Sri.M. Gopikrishnan Nambiar and the learned counsel for R.F.A.528 of 2010 -:

4. :- the respondents Smt.Zohara. The learned counsel for the appellants has pointed out that most of the properties in Chennai which are B schedule properties are subject matter of lease and some of the properties have been taken over by the concerned landlords through judicial proceedings. According to the appellants, those properties are not available for partition and therefore, apparent injustice has been resulted to the appellants, as no shares have been allotted to them from the plaint A schedule properties, which are available for partition. On hearing the learned counsel for the respondents also, it has come out that the properties situated in Kerala are allotted exclusively to the shares of the plaintiffs. Further, a portion of the property in plaint B schedule item No.1 is also allotted to the shares of the plaintiffs. According to the learned counsel for the appellants, the properties in Kerala are the landed properties out of which shares ought to have been allotted to the appellants also. R.F.A.528 of 2010 -:

5. :- 6. On hearing either sides, this Court is of the view that the appellants are really put to serious heartburn as no shares were allotted to them from plaint A schedule item Nos.1 to 3 and 5 in Kerala, which are available for partition. At the same time, it seems that the shares allotted to the appellants are confined to the properties in Chennai. Especially when the appellants have a case that some of the properties were taken away by the landlords through judicial proceedings, the grievance expressed by the appellants seems to be correct. This Court is of the view that the said grievance can be redressed by directing the court below to allot shares to both the parties from the properties available for partition, from both plaint A schedule as well as plaint B schedule items. The said grievance can be redressed by allotting 6/15 shares to the plaintiffs in the plaint A schedule properties situated in Kerala as well as the plaint B schedule properties situated at Chennai. The appellants should also be allotted with shares from both plaint A schedule properties R.F.A.528 of 2010 :-

6. :- situated in Kerala as well as the plaint B schedule properties situated at Chennai. Anybody need not be burdened by confining their shares, either to the properties situated in Kerala alone or to the properties situated at Chennai alone. Let the shares be allotted to both sides from both the properties separately so that there will not be any room for complaints. Matters being so, the impugned final decree passed by the court below is liable to be set aside and the matter has to be remitted to the court below for fresh disposal in accordance with law.

7. In the result, this appeal is allowed and the impugned final decree is set aside. It has been reported that the earlier commissioner who had prepared the Commissioner's plan and report is not a practising lawyer at present. The Court can ignore the earlier Commissioner's report and the court below shall appoint a fresh Commissioner for carrying out partition by metes and bounds. While carrying out the said partition, properties R.F.A.528 of 2010 :-

7. :- shall be allotted to both sides from plaint A schedule properties available for partition as well as from the plaint B schedule properties available for partition. In case any of the properties coming under B schedule is not available for partition, the party who sets up such a plea has to prove the same by producing adequate

evidence before the court below. When the appellants allege that two properties have been returned to the landlords, it is for them to prove that fact. If any such properties were taken away by the landlords, that shall be excluded from partition. Being an old matter, the court below shall make every endeavour to dispose of the matter finally, as expeditiously as possible, at any rate within a period of six months from the date of receipt of a copy of this judgment. Sd/- B. KEMAL PASHA, JUDGE ul/- [True copy] P.S. to Judge

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