

Cherupushpam vs Daisy

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Court : Kerala

Decided On : Mar-28-2025

Judge : Honourable Mr. Justice a. Badharudeen

Appeal No. : RFA/51/2023

Appellant : Cherupushpam

Respondent : DAISY

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE A. BADHARUDEEN FRIDAY, THE 28TH DAY OF MARCH 2025 / 7TH CHAITHRA, 1947 RFA NO. 51 OF 2023 AGAINST THE JUDGMENT DATED 30.09.2022 IN FDIA NO.4965 OF 2014 IN OS NO.548 OF 2012 OF I ADDITIONAL SUB COURT, THRISSUR APPELLANTS/RESPONDENTS:

1 CHERUPUSHPAM AGED 68 YEARS, W/O.KIDANGAN VAREETH, PADINJAREKOTTA, 2 RAJAN AGED 47 YEARS S/O.KIDANGAN VAREETH, PADINJAREKOTTA, 3 RAJI AGED 41 YEAR, D/O.KIDANGAN VAREETH, PADINJAREKOTTA, 4 RAVI AGED 39 YEARS S/O.KIDANGAN VAREETH, PADINJAREKOTTA, 5 ROBIN

AGED 37 YEARS S/O.KIDANGAN VAREETH, PADINJAREKOTTA, BY
ADVS. SANTHOSH P.PODUVAL R.RAJITHA CHITHRA S.BABU

RFA No.51 of 2023 :2 : RESPONDENTS/PETITIONERS: 1 DAISY AGED 65 YEARS, D/O.KINDANGAN VAREETH, THATTAMPARAMBIL VEEU, P.O.PUTHUVYPINE, VYPPIN(COCHIN) ERNAKULAM -, PIN - 682508 2 GRACY W/O.TOMY, AGED 63 YEARS, D/O.KINDANGAN VAREETH, THATTAMPARAMBIL VEEU, P.O.PUTHUVYPINE, VYPPIN(COCHIN) ERNAKULAM , PIN - 682508 BY ADVS. PLEASANT.T.SAMUEL N.P.SAMUEL THIS REGULAR FIRST APPEAL HAVING BEEN FINALLY HEARD ON 28.03.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:
RFA No.51 of 2023 :3 :

A.BADHARUDEEN, J.

===== RFA No.51 of 2023
===== Dated this the 28th day of March, 2025

JUDGMENT

The appellants are the respondents in FDIA No.4695 of 2014 in O.S.No.548 of 2012 on the files of the 1st Additional Sub Court, Thrissur. They impugn the final decree and judgment dated 30.09.2022 therein. The respondents herein are the petitioners/plaintiffs in FDIA/ suit.

2. I shall refer the parties hereinafter as petitioners and respondents.

3. Short facts:- In this matter, a preliminary decree

was passed whereby it was ordered to divide the plaint schedule property into 27 equal shares and allot 6 such shares to the petitioners herein who are the plaintiffs in RFA No.51 of 2023 :4 : the suit. On the basis of preliminary decree, the present application for passing the Final Decree has been filed.

4. The 1st respondent/1st defendant filed counter statement contending that the respondents/defendants have been residing in the house situated in the decree

schedule property and they renovated the same. Accordingly they sought to allot the said plot including the house therein in favour of them.

5. The trial court appointed Commissioner and Surveyor to effect partition. The Commissioner filed report

and plan on 31.03.2022. The trial court marked Commission Report as Ext.C1 and sketch as C1 (a). That apart, the trial Court marked C1 (b), the enlarged version of C1 (a) also.

6. The trial Court, in fact considered the demand of the respondents/defendants requesting allotment of plot RFA No.51 of 2023 :5 :

d in Ext.C1 (a) and (b) including the house situated therein in their favour and allotted the same accordingly while allotting the plot d in a rectangular shape having measurement of 15 x 10 meters in favour of the petitioners.

7. Earlier, the sketch submitted by the Commissioner was objected by the petitioners contending that they would not be able to construct a house as per

the plan appended to the earlier report. Thereafter, the present C1 series report and sketch were filed. The same were opposed by the respondents contending that as per Ext.C1(a) if plot c is allotted to the petitioners, they could not construct houses in the property for all of them. Therefore, allotment of shares on the strength of C1(a) plan is not on the basis of equity principle. At the time of hearing, the learned counsel for the petitioners argued that instead of c plot (a triangular plot having 15 x 10 RFA No.51 of 2023 :6 : meters) if the plan is modified to allot a rectangular plot having 17.8 meters (North), 17.5 m (South) , 8.5 m (West) and 8.4 m (East), it is beneficial to the respondents also. He also shown such a draft plan in this regard.

8. Opposing this contention, the learned counsel for the petitioners submitted that the if the width of c plot

is reduced to 8.4 or 8.5, the petitioners could not construct a house and the purpose of getting separate share to the petitioners is to construct a house of

therein by the petitioners. Therefore, suggestion made by the

learned counsel for the respondents could not be accepted. It is also submitted that since 'd' plot as such is allotted to the defendants together, allotment of shares in between them is possible only after demolition of the house situated therein, otherwise no division among the defendants is possible even accepting the proposal made by the learned counsel for the respondents. In Paragraph 5

RFA No.51 of 2023 :7 :

of the order of the trial court observed that Commissioner proposed to allot plot c in Ext.C1(a) having an extent of 3.7 cents worth Rs.49,58,000/- towards petitioners share. Plot d having an extent of 12.7 cents which includes building marked as b in it and worth Rs.1,72,88,500/- (17018000+270000) has been proposed towards the share of respondents. Plot a in Ext.C1 (a) has been set apart as

a way. In Ext.C1(b), the plot allotted to petitioners is shown as A schedule and the plot allotted to respondents together are shown as B schedule. Respondents filed the same objections which were already considered by my learned predecessor. So the objection need not be entertained at this stage. Moreover, respondents sought to allot a plot in which the house situates in their favour to which the petitioners have no objection. The house situates in major portion of the decree schedule property. Petitioners are also entitled to a plot which can be convenient for constructing a house. Plot a in Ext.C1 (a)

RFA No.51 of 2023 :8 : has been set apart as a way. Thus, the plot proposed for respondents has way convenient for its enjoyment. Thus, final decree can be passed confirming the allotment proposed by the Commissioner.

9. On evaluating the reasonings of the learned

Sub Judge and having considered the contention raised by the petitioners, it is discernible that 'c' plot in a triangular shape with 15 x 10 meters is allotted to the petitioners, with a view to facilitate construction of house therein; while allotting 'd' plot together in favour of the respondents/defendants along with the house situated therein as demanded by them. Making a slight change in the length and

width of c plot as suggested by the learned counsel for the respondents by itself does not make it convenient for all the respondents to have separate houses in the 'd' plot without demolishing the house therein. Even now after demolishing the house, RFA No.51 of 2023 :9 : defendants can equally share the properties to have separate houses. Having considered the facts and circumstances, nothing substantiated to hold that the trial court went wrong in granting the final decree. Hence this appeal fails and is accordingly dismissed. Considering the nature of this case, there shall be no order as to cost. Sd/- A.BADHARUDEEN JUDGE nk

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