

Mohanan vs Girija

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Court : Kerala

Decided On : Feb-29-2024

Judge : Honourable Mr. Justice Sathish Ninan

Appeal No. : RFA/891/2011

Appellant : Mohanan

Respondent : Girija

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE SATHISH NINAN
THURSDAY, THE 29TH DAY OF FEBRUARY 2024 / 10TH PHALGUNA,
RFA NO. 891 OF 2011 AGAINST THE JUDGMENT AND DECREE
DATED 26.02.2011 IN O.S.NO.1693 OF 2008 OF THE SUB COURT,
THRISSUR APPELLANTS/DEFENDANTS 1 AND 6: 1 MOHANAN,
AGED 60 YEARS, S/O.KUNDUVARAVALAPPIL LATE VELAYUDHAN,
PALAKKAL, THRISSUR. 2 MADHAVI W/O.KUNDUVARAVALAPPIL
LATE VELAYUDHAN, PALAKKAL, THRISSUR. BY ADVS.
SRI.G.SREEKUMAR (CHELUR) SRI.K.RAVI PARIYARATH
RESPONDENTS/PLAINTIFFS AND DEFENDANTS 2 TO 5: 1 GIRIJA
W/O.KALATHIL BABU DEVANAND, CHITTATTUKARA, THRISSUR

TALUK - 680 511. 2 GEETHA, W/O.PALLIYIL BABU, POONKUNNAM,THRISSUR-680001 3 SOBHANA W/O.IYNIPPILY PRABHAKARAN, SANTHIPURAM, KODUNGALLUR TALUK-680664 4 MAIDHILI W/O.AYYAPPAN, KUNNATH LANE, PALLIPURAM, ERNAKULAM-680732 R.F.A.No.891 of 2011 -: 2 :- 5 JAYANTHI W/O.THERAMBIL SASIKUMAR, THALIKULAM VILLAGE, CHAVAKKAD TALUK-680506 6 SUNITHA W/O.CHEMBALIPURAM MANI, KODANNUR, THRISSUR-680574 BY ADV SRI.P.V.CHANDRA MOHAN THIS REGULAR FIRST APPEAL HAVING COME UP FOR HEARING ON 29.02.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SATHISH NINAN, J.

===== R.F.A.No.891 of 2011 =====
===== Dated this the 29th day of February, 2024

JUDGMENT

The preliminary decree in a suit for partition is under challenge by defendants 1 and 6.

2. The plaint schedule consists of three items of

properties. The properties belonged to the predecessor in interest of the parties, namely, Velayudan. The plaintiffs are his two daughters. Defendants 2 onwards are their siblings. The 1 st defendant is their mother- wife of Velayudhan. They seek for partition and separate possession.

3. The trial court passed the decree in the following terms;

a) The properties shown in the schedule to the plaint shall be divided into 8 equal shares, out of which the plaintiffs together are entitled to get 2/8 shares in the properties shown as item Nos.1 and 2 in the schedule to the plaint. R.F.A.No.891 of 2011 -: 2 :-

b) The first plaintiff is entitled to get 1/8 share in the property shown as item No.3 in the plaint schedule. c) The first defendant is entitled to get 2/8 shares in item No.1, 4/8 shares in item No.2 and 7/8 shares in item No.3 of the plaint schedule. d) Defendants 2 to 5 are entitled to get 1/8 share each in item No.1 in the schedule to the plaint. e) Defendants 2 and 4 are entitled to get 1/8 share each in the property shown as item No.2 in the plaint schedule. f) The cost of the suit shall come out of the estate. g) The question regarding the reservation and equities are relegated to the final decree proceedings. h) Any of the parties may apply for passing final decree. i) The suit is adjourned sine die.

4. I have heard the learned counsel on either side.

5. The partibility of the property in between the

parties, is not in dispute. The only challenge is with regard to the quantum of shares allotted by the trial court. With regard to the plaint item Nos.1 and 2, the 5th defendant had executed Ext.B1 Release Deed in favour R.F.A.No.891 of 2011 :- 3 :- of the 1st defendant. With regard to plaint item Nos.1 and 2, the 3rd defendant had released her rights in favour of the 1st defendant as per Ext.B2. So also, with regard to the very same items, the 6 th defendant had released her rights in favour of the 1 st defendant as per Ext.B4.

6. With regard to plaint item No.3, the 2 nd plaintiff and defendants 2 to 6 had executed Ext.B3 Release Deed in favour of the 1 st defendant.

7. The releasing of rights by the parties under

the above mentioned documents are not in dispute. Taking above documents into consideration, it is evident that the quantum of shares declared by the trial court is not correct.

8. It is not in dispute between the parties that the correct quantum of shares of the parties is as given hereunder; R.F.A.No.891 of 2011 :- 4 :-

i) Over item No.1:- a) The 1st plaintiff is entitled to 1/8 share. b) The 2nd plaintiff is entitled to 1/8 share. c) The 1st defendant is entitled to 4/8 shares. d) The 2nd defendant is entitled to 1/8 share. e) The 3rd defendant is not entitled to any share. f) The 4th defendant is entitled to 1/8 share. g) The 5th defendant is not entitled to any share. h) The 6th defendant is not entitled to any share. ii) Over item No.2:- a) The 1st plaintiff is entitled to 1/8 share. b) The 2nd plaintiff is entitled to 1/8 share. c) The 1st defendant is entitled to 4/8 shares. d) The 2nd defendant is entitled to 1/8 shares. e) The 3rd defendant is not entitled to any share. f) The 4th defendant is entitled to 1/8 shares. g) The 5th respondent is not entitled to any share. h) The 6th defendant is not entitled to any share. iii) Over item No.3:- a) The 1st plaintiff is entitled to 1/8 share. b) The 2nd plaintiff is not entitled for any share. c) The 1st defendant is entitled to 7/8 shares. d) The 2nd defendant is not entitled for any share. e) The 3rd defendant is not entitled for any share.

R.F.A.No.891 of 2011 :- 5 :- f) The 4th defendant is not entitled for any share. g) The 5th defendant is not entitled for any share. h) The 6th defendant is not entitled for any share.

9. The decree and judgment of the trial court is

set aside and decree is passed as above. Equities to be worked out in the final decree proceedings. Appeal is allowed as above. No cost. Sd/- SATHISH NINAN,
JUDGE yd

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