

Prasanna Kumar Vs Radhakrishnan

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Court : Kerala Orders

Decided On : Mar-05-2024

Judge : Honourable Mr.Justice C. Jayachandran

Appeal No. : OP(C)/199/2024

Appellant : Prasanna Kumar

Respondent : Radhakrishnan

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE C. JAYACHANDRAN TUESDAY,
THE 5TH DAY OF MARCH 2024 / 15TH PHALGUNA, 1945 OP(C) NO. 199 OF
2024

**ORDER DATED 12.01.2024 IN EA NO.637 OF 2023 IN EP NO.486
OF**

2023 OF PRINCIPAL MUNSIF COURT, CHERTHALA
PETITIONER/PETITIONER: PRASANNA KUMAR AGED 53 YEARS S/O.
MADHAVAN, NEDUNGATTU, PERUMTHURUTH MURI, BY ADVS. THOMAS
T.VARGHESE PHILIP T.VARGHESE ACHU SUBHA ABRAHAM V.T.LITHA
K.R.MONISHA JIJO PAUL RESPONDENTS/COUNTER PETITIONER:

1 RADHAKRISHNAN AGED 61 YEARS S/O. MADHAVAN, NEDUNGATTU, PERUMTHURUTH MURI, 2 PUSHPAVALLY AGED 58 YEARS D/O. BHAVANI, PUTHENPURAKKAL, KATTOOR MURI, KALAVOOR P.O, ALAPPUZHA, PIN - 688 522 3 GEETHA AGED 55 YEARS D/O. BHAVANI, THEKKECHIRA, CHARAMANGALAM, MUHAMMA P.O, ALAPPUZHA, PIN - 688 525 4 LALITHA AGED 54 YEARS D/O. BHAVANI, MARALI, PRAYAR, UDAYANAPURAM, VAIKOM P.O, KOTTAYAM, PIN - 686 143

5 JAYAPRAKASH AGED 60 YEARS S/O. MADHAVAN, NADUNGATTU HOUSE, PERUMTHURUTH HOUSE KANJIKUZHI VILLAGE, S.L. PURAM P.O, ALAPPUZHA, PIN - 688 523 6 KUNJUMOL AGED 50 YEARS D/O BHAVANI, PANATHARAKARY HOUSE, CHERTHALA EAST MURI, VARANAD, CHERTHALA P.O, ALAPPUZHA, PIN - 688 539 7 LEELA MOHANDAS AGED 58 YEARS W/O LATE MOHANDAS, PERUMTHURUTH HOUSE KANJIKUZHI VILLAGE, S.L. PURAM P.O, ALAPPUZHA, PIN - 688 523 8 PRAMOD AGED 40 YEARS S/O LATE MOHANDAS, PERUMTHURUTH HOUSE KANJIKUZHI VILLAGE, S.L. PURAM P.O, ALAPPUZHA, PIN - 688 523 9 PRASANTH AGED 38 YEARS W/O LATE MOHANDAS, PERUMTHURUTH HOUSE KANJIKUZHI VILLAGE, S.L. PURAM P.O, ALAPPUZHA, PIN - 688 523 10 PRASAD S/O PURUSHOTHAMAN AND MANIKYA SREEMATHI, PERUMBATTU CHIRAYIL, CHARAMANGALAM MURI, VARANAM P.O, ALAPPUZHA, PIN - 688 555 11 SREEMATHI @ MANIKKA SREEMATHI W/OPURUSHOTHAMAN PERUMBATTUCHIRAYIL, CHARAMANGALAM MURI VARANAM P.O, ALAPPUZHA, PIN - 688 555 12 ANIRUDHAN S/O GOPALAN , CHANIVELIYIL, CHERUVARANAM, VARANAM P.O ALAPPUZHA, PIN - 688 555 13 KUMARI W/O SETHU, PAKKUKANDAM, CHERIKKETHARA, CHEMMANADU KARA P.O, VAIKOM, KOTTAYAM, PIN - 686 606 14 ARUNDHATHI W/O VISWARMBARAN, CHANIVELIYIL CHERUVARANAM, VARANAM P.O ALAPPUZHA, PIN - 688 555 15

CHANDRASEKHARAN S/O. NARAYANAN, PADATHU HOUSE,
PERUMTHURUTH MURI, 16 ANIRUDHAN S/O. NARAYANAN,
PADATHU HOUSE,PERUMTHURUTH MURI,

17 PURUSHOTHAMAN (DIED) PADATHU CHIRAYIL, S.L. PURAM
P.O ALAPPUZHA, 18 PONNAMMA D/O. NARAYANANI, PADATHU
HOUSE,PERUMTHURUTH MURI, 19 SARASAMMA D/O. NARAYANI,
PADATHU HOUSE,PERUMTHURUTH MURI, 20 THANKAMMA D/O.
NARAYANANI, PADATHU HOUSE,PERUMTHURUTH MURI, 21
SANTHA W/O. SUKUMARAN (DIED) PERUMBATTU CHIRAYIL,
VARANAM P.O, CHERTHALA ALAPPUZHA, PIN - 688 555 22
PRADEEP S/O. SUKUMARAN PERUMBATTU CHIRAYIL, VARANAM
P.O, CHERTHALA ALAPPUZHA, PIN - 688 555 23 GEETHA @MINI
D/O. SANTHA AND SUKUMARAN PERUMBATTU CHIRAYIL,
VARANAM P.O, CHERTHALA ALAPPUZHA, PIN - 688 555 24
RAVEENDRAN S/O RAMAN PADIKKETHARA HOUSE,
VADAKKEMURI, VAIKAPRAYAR P.O, VAIKOM KOTTAYAM, PIN - 686
146 25 VISWAMBARAN S/O. RAMAN, PADIKKETHARA HOUSE,
VADAKKEMURI, VAIKAPRAYAR P.O, VAIKOM, KOTTAYAM, PIN - 686
146 26 RADHA D/O. RAMAN AND NARAYANI, PADIKKETHARA
HOUSE, VADAKKEMURI, VAIKAPRAYAR P.O, VAIKOM KOTTAYAM,
PIN - 686 146 27 LEELA D/O. RAMAN AND NARAYANI,
PADIKKETHARA HOUSE, VADAKKEMURI, VAIKAPRAYAR P.O,
VAIKOM KOTTAYAM, PIN - 686 146 28 MALLIKA W/O SUKUMARAN ,
PADIKKETHARA HOUSE, VADAKKEMURI, VAIKAPRAYAR P.O,
VAIKOM KOTTAYAM, PIN - 686 146 29 DEVARAJAN

S/O. KESAVAN, PADATHU HOUSE, PERUMTHURUTH MURI, 30
PRAKASAN S/O. KESAVAN, PADATHU HOUSE, PERUMTHURUTH
MURI, 31 PRASANNA D/O. NAGAMMA AND KESAVAN, PADATHU
HOUSE, PERUMTHURUTH MURI, KANJIKUZHI VILLAGE, S.L.
PURAM P.O ALAPPUZHA, PIN - 688 523 32 SUMALATHA @ SUMA /O.
LAKSHMI AND KESAVAN, PADATHU HOUSE, PERUMTHURUTH

MURI, KANJIKUZHI VILLAGE, S.L. PURAM P.O, ALAPPUZHA, PIN - 688 523 33 PRABHAVATHI@ USHA W/O ANIRUDHAN, CHANIVELIYIL, CHERUVATANAM MURI, VARANAM P.O, CHERTHALA, ALAPPUZHA, PIN - 688 555 34 AJI @ AJIMOL D/O ANIRUDHAN, CHANIVELIYIL, CHERUVATANAM MURI, VARANAM P.O, CHERTHALA, ALAPPUZHA, PIN - 688 555 35 ARUN S/O ANIRUDHAN, CHANIVELIYIL, CHERUVATANAM MURI, VARANAM P.O, CHERTHALA, ALAPPUZHA, PIN - 688 555 36 KUNJUMANI W/O. LATE PURUSHOTHAMAN, PADATHU HOUSE,PERUMTHURUTH MURI, KANJIKUZHI VILLAGE, S.L. PURAM P.O ALAPPUZHA, PIN - 688 523 37 AKHIL S/O. PURUSHAN @ PURUSHOTHAMAN, PADATHU HOUSE,PERUMTHURUTH MURI, KANJIKUZHI VILLAGE, S.L. PURAM P.O ALAPPUZHA, PIN - 688 523 38 VISWANATHAN NAIR VALIYAKULANGARA VELI, MARUTHORVATTOM, CMC 16, CHERTHALA, ALAPPUZHA, PIN - 688 539 39 VIJAYALAKSHMI D/O. LATE MINIMOL @ MINI, VALIYAKULANGARA VELY,MARUTHORVATTOM, CMC 16, CHERTHALA ALAPPUZHA, PIN - 688 539 BY ADVS. DR V N SANKARJEE V.N.MADHUSUDANAN(K/687/1997) R.UDAYA JYOTHI(U-90) M.M.VINOD(K/778/2002)

M.SUSEELA(K/6/2009) KEERTHI B. CHANDRAN(K/001715/2018) VIJAYAN PILLAI P.K.(K/001575/2019) C.PURUSHOTHAMAN NAIR(K/000433/2017) SINEESH K.M.(K/000379/2022) THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 05.03.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated, this the 5th day of March 2024 The Petitioner herein is the petitioner in E.A.No.637/2023 preferred in E.P.No.486/2023 arising from O.S.No.403/1982 of the Principal Munsiff Court, Cherthala. The said Execution Application was filed under Order 21, Rule 97 of the Code, which was dismissed by Ext.P5 order. The challenge in this Original Petition is directed against Ext.P5 order.

2. Having heard the learned counsel appearing for

the petitioner and respondents, this court notice that the present petitioner is a legal heir of the Original 15th defendant in the partition suit, O.S.No.403/1982, wherefore, he is not entitled to maintain an application under Order 21, Rule 97. The expression any person as employed in Rule 97 cannot include a judgment debtor, as held by the Honorable Supreme Court in Bhanwar Lal v Satyanarayain, 1995 (1) SCC 6. It is stating the said reason that Ext.P4 application is seen dismissed vide Ext.P5. This court finds no illegality or infirmity with respect to Ext.P5, wherefore, the challenge in this Original Petition fails and the same will stand dismissed. It is clarified that the petitioner will be at liberty to pursue such other remedy, if any, available in law as against the supplemental final decree passed in I.A.No.13/2020, as also, the delivery sought for on the basis of such supplemental final decree dated 08.12.2022. Sd/- C.JAYACHANDRAN, JUDGE

SSG APPENDIX OF OP(C) 199/2024 PETITIONERS EXHIBITS Exhibit P1 TRUE COPY OF FINAL DECREE PASSED IN I.A NO. 1778 OF 1995 IN O.S NO. 403 OF 1982 DATED 20.01.2004 Exhibit P2 TRUE COPY OF SUPPLEMENTARY FINAL DECREE DATED 24.09.2021 PASSED BY THE PRINCIPAL MUNSIFF COURT, CHERTHALA Exhibit P3 TRUE COPY OF E.P NO. 486/2023 IN O.S NO. Exhibit P4 TRUE COPY OF E.A NO. 637/2023 IN E.P NO. 01.12.2023 BEFORE PRINCIPAL MUNSIFF'S COURT, CHERTHALA Exhibit P5 TRUE COPY OF ORDER DATED 12.01.2024 IN E.A NO. 637/2023 IN E.P NO. 486/2023 IN O.S. NO. 403/1982 PASSED BY PRINCIPAL RESPONDENTS EXHIBITS Exhibit R10(a) True copy of the supplementary final decree dated 8.12.2022 in I.A. No.13/2020 in O.S.No.403/1982 of the Munsiff's Court, Cherthala

Exhibit R10(b) True copy of the preliminary decree dated in O.S. No.403/1982 of the Munsiff's Court, Cherthala Exhibit R10(d) True copy of the judgment dated 10.8.1994 in A.S.No.59/1988 of the Sub Curt, Cherthala Exhibit R10(e) True copy of the objection dated 2.12.2023 in E.A. No. 637/2023 in E.P. No. 486/2023 on the file of the Principal