

Gracy vs Muhammedali

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SooperKanoon Citation : sooperkanoon.com/1330430

Court : Kerala

Decided On : Jun-30-2023

Judge : Honourable Mr. Justice P.Somarajan

Appeal No. : OP(C)/19/2023

Appellant : GRACY

Respondent : Muhammedali

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.SOMARAJAN
FRIDAY, THE 30th DAY OF JUNE 2023 / 9TH ASHADHA, 1945 OP(C)
NO. 19 OF 2023 AGAINST THE ORDER DATED 29.10.2022 IN I.A.No.1
OF 2022 IN OS PETITIONERS [PETITIONERS 1 TO 3 IN I.A.No.1 OF
2022- DEFENDANTS 1 TO 3]: 1 GRACY, AGED 60 YEARS (CORRECT
AGE), WIFE OF KANIYAPARAMBIL JOSEPH, VANIYAMBALAM
AMSOM, PAZHEDAM DESOM, KOORAD P.O., NILAMBUR TALUK, 2
HAMZA, AGED 66 YEARS, SON OF KEERI VEERAN, VANIYANBALAM
AMSOM, PAZHEDAM DESOM, KOORAD P.O., NILAMBUR TALUK, 3
JOSE, AGED 70 YEARS (CORRECT AGE), SON OF
KANIYAPARAMBIL AUGASTEE, VANIYAMBALAM AMSOM,

PAZHEDAM DESOM, KOORAD (P.O.), NILAMBUR TALUK, BY ADV R.RAJESH KORMATH RESPONDENT [RESPONDENT IN I.A.No.1 OF 2022-PLAINTIFF]: MUHAMMEDALI, AGED 49 YEARS, SON OF AMBALAPARAMBIL ASSAINAR HAJI, KALIYANKUNNAN HOUSE, PORUR AMSOM, KOTTAKUNNU DESOM, PORUR P.O, NILAMBUR TALUK, THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 30.06.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: OP(C) No.19 of 2023 2

JUDGMENT

Ext.P14 order is under challenge. It is an order

passed on an application submitted by the defendants to remit back the Commissioner's report to the Commissioner and Surveyor. But, it was dismissed by the trial court under Ext.P14 order. It is well within the authority of the defendants to send out a fresh commission to measure out the property with the assistance of a qualified Surveyor in reference to title deed, instead of seeking to remit back the Commissioner's report. It is also permissible to accept both the Commissioner's report, if it is found necessary and as such by reserving the liberty of the defendants/petitioners to send out a fresh Commission, the present Original Petition will stand disposed of. In the event of submission of an application in that behalf by the defendants, the trial court shall OP(C) No.19 of 2023 3 take up the same without causing any further delay and pass orders. The Original Petition is disposed of. Sd/- P.SOMARAJAN JUDGE DMR/- OP(C) No.19 of 2023 4 APPENDIX OF OP(C) 19/2023 PETITIONERS' EXHIBITS Exhibit P1 TRUE COPY OF THE PLAINT DATED 22.2.2013 IN O.S.NO.116 OF 2013 ON THE FILE OF THE COURT Exhibit P2 TRUE COPY OF THE WRITTEN STATEMENT DATED 4.4.2013 FILED BY THE FIRST-DEFENDANT IN Exhibit P3 TRUE COPY OF THE WRITTEN STATEMENT DATED 27.5.2015 FILED BY THE SECOND DEFENDANT IN O.S.NO.116 OF 2013 ON THE FILE OF THE COURT Exhibit P4 TRUE COPY OF THE WRITTEN STATEMENT DATED 20.9.2019 FILED BY THE THIRD-DEFENDANT IN Exhibit P5 TRUE COPY OF THE I.A.NO. 2766 OF 2015 AND THE ACCOMPANYING AFFIDAVIT DATED 11.11.2015 IN O.S.NO.- 116 OF

2013 ON THE FILE OF THE COURT Exhibit P6 TRUE COPY OF THE REPORT DATED 27.7.2016 FILED BY THE COMMISSIONER IN O.S.NO. 116 OF 2013 ON Exhibit P7 TRUE COPY OF THE PLAN DATED 27.7.2016 SUBMITTED BY THE COMMISSIONER ALONG WITH EXHIBIT-P6-REPORT Exhibit P8 TRUE COPY OF I.A.NO. 155 OF 2017 AND THE ACCOMPANYING AFFIDAVIT DATED 10.1.2017 IN O.S.NO. 116 OF 2013 ON THE THE OF THE COURT Exhibit P9 TRUE COPY OF THE REPORT DATED 20.1.2018 FILED BY ADVOCATE COMMISSIONER IN I.A.NO.155 OF OP(C) No.19 of 2023 5 2017 IN O.S.NO.116 OF 2013 ON THE FILE OF THE COURT OF THE MUNSIFF OF MANJERI Exhibit P10 TRUE-COPY OF THE PLAN DATED 20.1.2018 FILED

BY ADVOCATE COMMISSIONER IN I.A.NO. 155 OF 2017 IN O.S.NO.116 OF 2013 ON THE FILE OF THE COURT OF THE MUNSIFF OF MANJERI Exhibit P11 TRUE COPY OF THE OBJECTION DATED 24.7.2018 IN Exhibit P12 TRUE COPY OF I.A.NO. 1 OF 2022 AND THE ACCOMPANYING AFFIDAVIT DATED 16.3.2022 IN Exhibit P13 TRUE COPY OF THE COUNTER DATED 25.8.2022 FILED BY THE RESPONDENT-PLAINTIFF TO I.A.NO. 1 OF 2022 IN O.S.NO. 116 OF 2013 ON THE FILE OF THE COURT OF THE MUNSIFF OF MANJERI Exhibit P14 CARBON-COPY OF THE ORDER DATED 29.10.2022 IN I.A.NO. 1 OF 2022 IN O.S.NO. 116 OF 2013 ON Exhibit P15 CERTIFIED COPY OF THE ORDER DATED 8.2.2017 IN IA NO. 155 OF 2017 IN O.S.NO. 116 OF 2013 ON Exhibit P16 CERTIFIED COPY OF THE WORK-MEMO DATED 28.4.2017 SUBMITTED BY THE FIRST PETITIONER HEREIN BEFORE THE COMMISSIONER IN O.S.NO.116 OF 2013 ON THE FILE OF THE COURT OF THE MUNSIFF OF MANJERI // TRUE COPY // P.A. TO JUDGE

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