

Bhanumathi vs Damodharan

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Court : Kerala

Decided On : Jun-30-2023

Judge : Honourable Mr. Justice T.R.Ravi

Appeal No. : RSA/161/2021

Appellant : Bhanumathi

Respondent : Damodharan

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE T.R.RAVI FRIDAY, THE 30TH DAY OF JUNE 2023 / 9TH ASHADHA, 1945 AGAINST THE JUDGMENT IN AS 77/2019 OF SUB COURT, CHENGANNUR OS 275/2013 OF MUNSIFF COURT, CHENGANNUR APPELLANTS/APPELLANTS/PLAINTIFFS:

1 BHANUMATHI AGED 70 YEARS W/O. LATE GANGADHARAN, KAVILAYIL VEEDU, CHERIYANADU EAST MURI, 2 ANIL AGED 45 YEARS 3 AJI AGED 42 YEARS 4 AJITHA AGED 40 YEARS D/O. BHANUMATHI, KAVILAYIL VEEDU, CHERIYANADU EAST MURI, 5 PADMINI W/O. DEVARAJAN, MUNDUPILAYILAYILKIZHAKKETHIL, CHERINADU EAST MURI, CHERIYANAD VILLAGE, CHENGANNUR

TALUK, ALAPPUZHA DISTRICT- 689 511. ARUN CHAND SRI.JOSEPH
MARY DAS SHRI.THAREEQ ANVER SHRI.JAI GOVIND M.J.
SHRI.ANANDU R. SHRI.MAJID MUHAMMED K. SHRI.BHARAT VIJAY
P.

RESPONDENTS/RESPONDENTS/DEFENDANTS: 1 DAMODHARAN AGED 72
YEARS THURUPPANAPADINJARETHI (JALAJA BHAVAN), CHERIYANADU
EAST MURI, CHERIYANADU VILLAGE, CHENGANNUR TALUK, ALAPPUZHA
DISTRICT-689 511. :2: 2 SARASAMMA W/O. DAMODHARAN,
THURAPPANAPADINJARETHI (JALAJABHAVAN) CHERIYANADU EAST MURI,
CHERIYANADU VILLAGE, CHENGANNUR TALUK, ALAPPUZHA DISTRICT-689
511. SRI. ESM.KABEER SMT. C.SHEEBA THIS REGULAR SECOND APPEAL
HAVING COME UP FOR ADMISSION ON 30.06.2023, THE COURT ON THE
SAME DAY DELIVERED THE FOLLOWING: :3:

T.R. RAVI, J.

----- Dated this the 30th day of June, 2023.

JUDGMENT

This appeal has been filed by the plaintiffs in O.S. No. 275 of 2013 on the files of
Munsiffs Court, Chengannur. The suit was filed by the appellants for declaration of
prescriptive easement right over a way and consequential injunction.

2. The respondent filed a counter claim seeking recovery of

possession of a portion shown as item No. 4(a) in the plaint schedule, which has
been shown as item No. 5 property in the counter claim. The trial court dismissed
the suit and allowed the counter claim in part.

3. An appeal was preferred against the dismissal of the suit before

the First Appellate Court and the appeal was also dismissed. It is against the
judgments of the trial court and the First Appellate Court, this Second Appeal was

preferred.

4. It can be seen from the counter claim that there was an

additional respondent in the counter claim by name Suresh. He was not made a party in the first appeal. Nor is he a party in the Second Appeal. It is obvious that the judgment and the decree in the counter claim was :4: never appealed against and therefore, the same has become final and cannot be challenged in this Second Appeal, which is filed only against the dismissal of the plaintiffs claim.

5. Insofar as the plaintiffs claim is concerned, the court below

specifically found that there is nothing on record to show any of the ingredients of the prescriptive easement. Re-appreciation of such evidence is not possible, unless the findings so recorded are found to be based on no evidence or erroneous or perverse. No such perversity is also made out. No substantial questions of law arise for consideration. Appeal fails and accordingly, it is dismissed. sd/- T.R. RAVI, JUDGE. Rv

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