

Hamza vs Hameed

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SooperKanoon Citation : sooperkanoon.com/1349712

Court : Kerala

Decided On : Jul-12-2023

Judge : Honourable Mr. Justice P.Somarajan

Appeal No. : CRP/583/2017

Appellant : HAMZA

Respondent : Hameed

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.SOMARAJAN WEDNESDAY,
THE 12th DAY OF JULY 2023 / 21ST ASHADHA, 1945 CRP NO. 583 OF 2017
AGAINST THE ORDER DATED 01.02.2017 IN I.A.No.1539/2016 IN FD IA

**No.1293/2013 IN OS 340/2009 OF SUB COURT, TIRUR AND THE
JUDGMENT**

DATED 20.09.2017 IN CMA 7/2017 OF ADDITIONAL DISTRICT COURT, TIRUR
REVISION PETITIONER/PETITIONER/APPELLANT/2nd DEFENDANT: HAMZA,
S/o AMMAYATH KONDASSDERI MUHAMMED KUTTY, THRIKKANAPURAM
AMSOM, AYANKALAM DESOM, TIRUR TALUK, REP. BY HIS POWER OF
ATTORNEY HOLDER JAMEELA, W/o HAMZA, AMMAYATH KONDASSDERI

HOUSE, THRIKKANAPURAM AMSOM, AYANKALAM DESOM, TIRUR TALUK
BY ADV SMT.DEEPA NARAYANAN
RESPONDENTS/RESPONDENT/RESPONDENT/PLAINTIFF,D1,3,4: 1 HAMEED,
S/o AMMAYATH KONDASSDERI MUHAMMED KUTTY, 2 UMMERIYA UMMA,
W/o AMMAYATH KONDASSDERI MUHAMMED KUTTY, 3 LATHEEF, S/o
AMMAYATH KONDASSDERI MUHAMMED KUTTY, 4 JAMEELA, D/o
AMMAYATH KONDASSDERI MUHAMMED KUTTY, BY ADVS. SRI.JAMSHEED
HAFIZ (CAVEATOR) K.SUJAI SATHIAN THIS CIVIL REVISION PETITION
HAVING COME UP FOR HEARING ON 12.07.2023, THE COURT ON THE
SAME DAY PASSED THE FOLLOWING: CRP No.583 of 2017 2

ORDER

At the preliminary decree stage as well as final decree stage, two applications were filed by the present petitioner to set aside the ex parte decree. The application submitted for setting aside the ex parte preliminary decree was ended in dismissal, against which no appeal was preferred and as such it has become final and conclusive. In so far as the final decree is concerned, it is submitted that they were not heard pertaining to the allotment of property and the building situated therein and no reasonable opportunity was also given in that behalf. It was disputed and denied by the learned counsel for respondents. But, taking into account the relationship between the parties, who are siblings,

and the nature of suit, especially when preliminary decree was accepted in toto, it is fit and proper to grant an opportunity to the present petitioner to contest the final decree application subject to the condition that they shall pay or deposit an amount of Rs.10,000/- (Rupees ten thousand only) by way of cost of respondents before the trial court within 15 days from the date of

CRP No.583 of 2017 3 appearance. On such deposit or payment, the final decree passed will stand set aside, failure to pay or deposit

the said amount would visit with the

schedule of three months from the date of appearance of the parties, in the event of deposit or payment. The parties shall appear before the trial court on 27.07.2023. The CRP will stand disposed of accordingly. Sd/- P.SOMARAJAN JUDGE DMR/- CRP No.583 of 2017 4 APPENDIX RESPONDENTS' ANNEXURE: ANNEXURE R1(a) : TRUE COPIES OF THE PHOTOGRAPHS SHOWING THE ILLEGAL CONSTRUCTION BY THE PETITIONER. // TRUE COPY // P.A. TO JUDGE

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