

K.M.Jayakaran vs Deepa Jayanarayanan

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Court : Kerala

Decided On : Feb-28-2023

Judge : Honourable Mr. Justice P.Somarajan

Appeal No. : RFA/10/2023

Appellant : K.M.Jayakaran

Respondent : Deepa Jayanarayanan

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.SOMARAJAN
TUESDAY, THE 28TH DAY OF FEBRUARY 2023 / 9TH PHALGUNA,
1944 AGAINST THE JUDGMENT DATED 15/12/2021 IN FDIA 115/2017
IN OS 7/2012 OF SUB COURT, KANNUR
APPELLANTS/RESPONDENTS 1,3 TO 5/ DEFENDANTS 1,3 TO 5:

1 K.M.JAYAKARAN, AGED 89 YEARS, S/O K.P. RAMAN,
PANCHAJANYAM, RED CROSS ROAD, PAYYAMBALAM, 2 JAIDEEP,
S/O JAYAKARAN, AGED 50 YEARS PANCHAJANYAM, RED CROSS
ROAD, PAYYAMBALAM, 3 RASHMI, AGED 47 YEARS, D/O
JAYAKARAN, PANCHAJANYAM, RED CROSS ROAD,

PAYYAMBALAM, KANNUR, PIN-670001. 4 NAVDEEP, S/O JAYAKARAN, AGED 45 YEARS PANCHAJANYAM, RED CROSS ROAD, PAYYAMBALAM, BY ADVS. GEORGE THOMAS (MEVADA)(SR.) AMAL GEORGE

RESPONDENTS/PETITIONERS 3 & 4/6TH
RESPONDENT/SUPPLEMENTAL PLAINTIFFS 3 & 4:

1 DEEPA JAYANARAYANAN, D/O LATE K.M.DAYANANDAN, AGED 62 YEARS, RETD. PROFESSOR, NAMITHA, PALLIKKUNNU, KANNUR PIN-670004. 2 M.M.NISHA, AGED 59 YEARS, D/O LATE K.M.DAYANANDAN, NO.21, POLICE MANIKYAM STREET, AYYANAVARAM, CHENNAI-600023. 3 NEENA SHAHANI, D/O LATE MOOLIYIL GOPALAN, & LATE SHAKUNTHALA AND W/O CHANDRU SHAHANI, AGED 69 YEARS, ART CURATOR, RESIDING AT 1005/12, MADHUR JYOTHI, HARI KRISHNAN MANDIR ROAD, MODEL COLONY, PUNE 411016. (IMPLEADED AS PER I.A.512/17 DATED 10.04.19) R1 & R2 BY ADVS.M.K.SUMOD K.R.AVINASH (KUNNATH) ABDUL RAOOF PALLIPATH VIDYA M.K. THIS REGULAR FIRST APPEAL HAVING COME UP FOR HEARING ON

28.02.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

It is yet another instance in which the jurisdiction of the trial court was misused so as to adjudicate the question of further entitlement by way of succession on the death of a party to the preliminary decree for partition at the final decree proceeding. It is based on an alleged Will left out by one of the sharer, who passed away after the passing of preliminary decree. An application in I.A.No.512/2017 was submitted for impleading the legal heir of deceased sharer based on the alleged Will. It was allowed after conducting an enquiry. Later on, I.A.No.2/2021 was filed to

accept the evidence tendered in I.A.No.512/2017 as evidence in proof of due execution and genuineness of the Will and it was allowed by the trial court overlooking the fact that such an enquiry was conducted during the final decree stage and an adjudication was rendered with respect to devolution of right regarding a sharer who passed away during its pendency, against which the defendants 1, 3 to 5 came up in appeal.

2. The jurisdiction vested with the court at

the final decree stage is to implement the preliminary decree without making any alteration, addition or substitution. Final decree is intended to give completion to the preliminary decree and it is not permissible to adjudicate any subsequent devolution of right on the death of any of the sharers when it is under dispute. In short, at the final decree stage, it is not permissible to pass yet another decree of partition, other than the one covered by the preliminary decree. Hence, though it is permissible to go into testamentary succession for the purpose of impleading the legatees under the Will or the natural legal heirs, the same cannot be substituted as if the same would constitute a decree of succession/partition based on any testament on the death of one of the sharers. Hence, the application submitted in I.A.No.2/2021 and the order passed by the trial court cannot be sustained and liable to be set aside and I do so.

3. In so far as 'B' schedule property is

concerned, it was divided based on an earlier compromise between the parties. Hence, the trial court has granted a preliminary decree pertaining to 'A' and 'C' schedule properties for division of

final decree, a single compact plot was allotted to the share of plaintiff in consideration of 1/3rd share. But, at the same time, the share of the first defendant was adjusted in three different locations as three separate plots. This would show the illegality and disparity in the allotment of the

share. Instead of dividing the property by metes and bounds, the trial court has committed a grave error by giving the share of the first defendant in three different places as different plots and by giving a single compact plot to the plaintiff. Hence, the final decree is hereby set aside and the matter is remanded back to the trial court to divide the property by metes and bounds for which a separate Survey Commission may be issued. The appeal will stand allowed accordingly. The parties shall appear before the trial court on 06.06.2023 to proceed further in the matter. The trial court shall dispose of the matter within a time schedule of five months from the date of appearance of the parties.

Sd/- P.SOMARAJAN JUDGE msp

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