

K.Gopalakrishna Bhat vs K.Gopalakrishna Bhat

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Court : Kerala Orders

Decided On : Feb-14-2023

Judge : Honourable Mr. Justice P.Somarajan

Appeal No. : RFA/428/2015

Appellant : K.Gopalakrishna Bhat

Respondent : K.Gopalakrishna Bhat

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.SOMARAJAN TUESDAY, THE 14TH DAY OF FEBRUARY 2023 / 25TH MAGHA, 1944 RFA NO. 428 OF 2015 AGAINST THE FINAL DECREE IN F.D.I.A.NO.910/2011 IN O.S.NO.200/1993 OF SUB COURT, KASARAGOD APPELLANTS IN RFA-RESPONDENTS IN F.D.I.A-DEFENDANTS IN SUIT: 1 K.GOPALAKRISHNA BHAT(DIED), S/O. KABEKKODE SHANKARANARAYANA BHAT, AGED 79 YEARS, RESIDING AT PALAR, BANDAKA VILLAGE, KASARAGOD TALUK, KASARAGOD DISTRICT, P.O.BANDADKA 671542.

[THE DEATH OF THE FIRST APPELLANT IS RECORDED VIDE ORDER

DATED 27/06/2018 IN MEMO DATED 02/06/2017 WITH CF 2 SHANKARANARAYANA BHAT(DIED), S/O. KABEKKODE SHANKARANARAYANA BHAT, AGED 74 YEARS, NOW RESIDING AT THOTTAM HOUSE, KARIKE VILLAGE OF MADIKERI, MADIKERI TALUK, P.O.KARIKE, PIN-571 247. ADDL.A3 KRISHNAVENI, AGED 65 YEARS, W/O.SHANKARANARAYANA BHAT, RESIDING AT THOTTAM HOUSE, KARIKE VILLAGE, MADIKERI TALUK, P.O. KARIKE, PIN- 571 247. THE LEGAL HEIR OF THE DECEASED APPELLANT NO.2 IS IMPEADED AS ADDITIONAL APPELLANT NO.3 VIDE ORDER DATED 13/12/19 IN IA 1/19. SRI.P.B.KRISHNAN MANU VYASAN PETER SRI.SABU GEORGE SRI.P.M.NEELAKANDAN SRI.P.B.SUBRAMANYAN SRI.S.NITHIN ANCHAL

RESPONDENTS IN RFA - PETITIONERS IN F.D.I.A-PLAINTIFFS IN SUIT:

1 K.GOPALAKRISHNA BHAT(DIED) S/O. KAMBARABETTU SUBRAYA BHAT, AGED 73 YEARS ASSISTANT ENGINEER, MAHARASHTRA STATE ELECTRICITY BOARD, AJARA, PIN-416505. 2 K.S.MAHALINGA BHAT, S/O. KAMBARABETTU SUBRAYA BHAT, AGED 66 YEARS, DEPUTY ENGINEER (MECHANICAL), GROUND WATER SURVEY DEPARTMENT, NEAR RAJA HOTEL, KUDAL, MAHARASHTRA STATE, PIN-416 520. ADDL.R3 SUMATHI, W/O LATE K GOPALAKRISHNA BHAT, AGED 60 YEARS, RESIDING AT MSEB, MAHARASHTRA, ADDL.R4 KISHAN BHAT, S/O LATE K GOPALAKRISHNA BHAT, RESIDING AT MSEB, MAHARASHTRA, ADDL.R5 KOMAL BHAT, D/O LATE K GOPALAKRISHNA BHAT, AGED 36 YEARS, RESIDING AT MSEB, THE LEGAL HEIRS OF THE DECEASED RESPONDENT NO.1 ARE

IMPEADED AS ADDITIONAL RESPONDENTS 3 TO 5 VIDE ORDER

DATED 10/11/2022 IN I.A.2/2022 BY ADV. SRI.KODOTH SREEDHARAN THIS REGULAR FIRST APPEAL HAVING COME UP FOR HEARING ON 14.02.2023, ALONG WITH CO.149/2016, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.SOMARAJAN TUESDAY, THE 14TH DAY OF FEBRUARY 2023 / 25TH MAGHA, 1944 CO NO. 149 OF 2016 AGAINST THE FINAL DECREE IN F.D.I.A.NO.910/2011 IN O.S.NO.200/1993 OF SUB COURT, KASARAGOD CROSS OBJECTORS/RESPONDENTS 1&2:

1 K.GOPALAKRISHNA BHAT(DIED), S/O.KAMBARABETTU SUBRAYA BHAT AGED 73 YEARS, ASSISTANT ENGINEER, MSEB, MAHARASTRA, AJARA PIN- 416505 2 K.S. MAHALINGA BHAT, S/O KAMBARABETTU SUBRAYA BHAT, AGED 66 YEARS, DEPUTY ENGINEER, (MECHANICAL GROUND WATER SURVEY DEPARTMENT) NEAR RAJA HOTEL KUDAL, MAHARASTRA- 416520 ADDL.3 SUMATHI, W/O LATE GOPALAKRISHNA BHAR, AGED 60 YEARS, ADDL.4 KISHAN BHAT, S/O LATE GOPALAKRISHNA BHAT, ADDL.5 KOMAL BHAT, D/O LATE GOPALAKRISHNA BHAT,

LEGAL HEIRS OF DECEASED 1ST CROSS OBJECTOR ARE IMPLEADED AS ADDITIONAL CROSS OBJECTORS 3 TO 5 VIDE ORDER DATED SRI.KODOTH SREEDHARAN KODOTH SREEDHARAN RESPONDENTS/APPELLANTS 1 &2:

1 K.GOPALAKRISHNA BHAT, S/O.KABEKKODE SANAKARANARAYANA BHAT, AGED 79 YEARS, R/AT PALAR, BANDAKA VILLAGE AND POST, KASARAGOD DISTRICT- 671542 2 SANKARANARAYANA BHAT, S/O KABEKKODE SANKARANARAYANA BHAT, AGED 74 YEARS, R/AT THOTTAM HOUSE, KARIKE VILLAGE AND POST, MADIKKERI TALUK, KARIKE PO, KARNATAKA 571247 SRI.P.B.KRISHNAN

THIS CROSS OBJECTION/CROSS APPEAL HAVING COME UP FOR HEARING ON 14.02.2023, ALONG WITH RFA.428/2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The dispute is pertaining to inclusion of a vested forest in the preliminary decree for partition and the final decree thereof. It is submitted that some of the properties included in the final decree is a vested forest and as such, no division can be effected over the property in derogation of interest of the forest department and the Government thereof over the property. It is submitted by the other side that it is an issue to be adjudicated with the forest department and the State Government. Reserving their right to agitate the abovesaid issue, the decree can be confirmed especially when it will not bind upon the forest department or the State Government since they are not in the party array. Pertaining to the Cross Objection, the mesne profit was not assessed at the final decree stage. The Commissioner assessed it at Rs.65,250/-, for which no objection was raised and no contra evidence was also adduced. Hence, a decree for recovery of the said amount is also granted, besides the preliminary decree granted. The Cross Objection will stand allowed in part accordingly. The appeal is dismissed. Cross Objection is allowed in part as above. No costs. Sd/- P.SOMARAJAN JUDGE rkr-14/02/23

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