

Mohammed Alias Kunhappu vs Mohammed Ali

Mohammed Alias Kunhappu vs Mohammed Ali

SooperKanoon Citation : sooperkanoon.com/1380887

Court : Kerala Orders

Decided On : Aug-02-2023

Judge : Honourable Mr. Justice P.Somarajan

Appeal No. : CRP/248/2022

Appellant : Mohammed Alias Kunhappu

Respondent : Mohammed Ali

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.SOMARAJAN
WEDNESDAY, THE 2ND DAY OF AUGUST 2023 / 11TH SRAVANA,
1945 CRP NO. 248 OF 2022 AGAINST THE ORDER DATED 18-07-
2022 IN I.A.NO.1/2021 IN A.S.NO.17/2021 OF DISTRICT COURT,
MANJERI PETITIONERS/PETITIONERS: 1 MOHAMMED ALIAS
KUNHAPPU, AGED 68 YEARS, S/O. CHEKKU HAJI,
PULIYANKODATH, KUTTIPPURAM, TIRUR TALUK, MALAPPURAM
DISTRICT, PIN - 679 571. 2 KADHIJA, W/O. MOHAMMED ALIAS
KUNHAPPU, PULIYANKODATH, KUTTIPPURAM, TIRUR TALUK,
MALAPPURAM DISTRICT, PIN - 679 571. BY ADV K.A.SALIL
NARAYANAN RESPONDENTS/RESPONDENTS:

1 MOHAMMED ALI, AGED 62 YEARS, S/O. ENUDHEEN, POTTAMMAL KUNHANNGATTIL HOUSE, KUTTIPPURAM AMSOM DESOM, P.O. KUTTIPPURAM, TIRUR TALUK, MALAPPURAM DISTRICT, PIN-679 571. 2 SANDEEP V.S. S/O. V.K.S. DAS, VAILEPPILLI HOUSE, CHUDUVALATHOOR DESOM, POST SHORNUR, OTTAPPALAM TALUK, PALAKKAD DISTRICT, PIN - 679 121. 3 JAGADEEP V.S., S/O. V.K.S. DAS, VAILEPPILLI HOUSE, CHUDUVALATHOOR DESOM, POST SHORNUR, OTTAPPALAM TALUK, PALAKKAD DISTRICT, PIN - 679 121. 4 MINI CHACKO, D/O. V.K.S. DAS, VAILEPPILLI HOUSE, CHUDUVALATHOOR DESOM, POST SHORNUR, OTTAPPALAM TALUK, PALAKKAD DISTRICT, PIN-679 121. NOW RESIDING AT 58, BROOK DALE, ST. RICHMOND HILL, ONTARIO, L4 E4 W2, CANADA REPRESENTED BY HER POWER OF ATTORNEY HOLDER P. K. LAKSHMANAN, S/O. KURUMBAN PALAKKATHARA HOUSE, KUTTIPPURAM AMSOM DESOM, P.O. KUTTIPPURAM, TIRUR TALUK. MALAPPURAM DISTRICT, PIN-679 571 BY ADVS. M.DEVESH G.SREEKUMAR (CHELUR)

THIS CIVIL REVISION PETITION HAVING COME UP FOR ADMISSION ON 02.08.2023, ALONG WITH CRP.168/2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.SOMARAJAN WEDNESDAY, THE 2ND DAY OF AUGUST 2023 / 11TH SRAVANA, 1945 CRP NO. 168 OF 2021 AGAINST THE ORDER DATED 22.03.2021 IN I.A.NO.21/2020 IN O.S.NO.102/2014 OF MUNSIF COURT, TIRUR PETITIONERS/RESPONDENTS 2 AND 3/DEFENDANTS 2 AND 3: 1 SANDEEP AGED 46 YEARS S/O.LATE VAILAPPILLI PARVATHI DAS, VAILAPPILLI HOUSE, SHORNUR, CHUDUVALATHUR P.O., OTTAPALAM TALUK, PALAKKAD DISTRICT, PIN-679 121. 2 JAGADEEP, AGED 46 YEARS S/O.LATE VAILAPPILLI PARVATHI DAS, VAILAPPILLY HOUSE, SHORNUR,

CHUDUVALATHUR P.O., OTTAPALAM TALUK, PALAKKAD DISTRICT, PIN-679 121. BY ADV M.DEVESH RESPONDENTS/PETITIONERS AND 4TH RESPONDENT/PLAINTIFFS AND 4TH DEFENDANT:

1 PULIYAMKODATH MUHAMMED @ KUNHAPPA AGED 69 YEARS, S/O.CHEKKU HAJI, KUTTIPPURAM AMSOM, DESOM AND POST, TIRUR TALUK, MALAPPURAM DISTRICT, PIN-679 571. 2 KADEEJA, AGED 60 YEARS, W/O.PULIYAMKODATH MUHAMMED @ KUNHAPPA, KUTTIPPURAM AMSOM, DESOM AND POST, TIRUR TALUK, MALAPPURAM DISTRICT, PIN-679 571. 3 MINI, AGED 49 YEARS, VAILAPPILLI HOUSE, SHORNUR, CHUDUVALATHUR P.O., OTTAPALAM TALUK, PALAKKAD DISTRICT, PIN-679 121. BY ADVS. K.A.SALIL NARAYANAN G.SREEKUMAR (CHELUR)

THIS CIVIL REVISION PETITION HAVING COME UP FOR ADMISSION ON 02.08.2023, ALONG WITH CRP.248/2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER

CRP No.248/2022 is by a third person who sought permission to appeal against the decree based on a compromise arrived at by the parties. Admittedly, he is not a party to the compromise decree or the suit thereof. The allegation is that by virtue of the compromise entered into by the parties, they have agreed to set up a way. It is submitted that under the guise of the said document, they are attempting to cut open a way through his property. Hence the appeal as an aggrieved person. It was rejected by the trial court, finding that the appellant/petitioner is not an aggrieved person. The legal position is very much settled by this court in Thottappayil Suresan and Others v. A.P.Gopalakrishnan and Others (2019 (1) KHC 284). It is fairly submitted by the learned counsel for the petitioner that they have initiated yet another proceeding, a separate suit for declaration and it is pending consideration. Somehow it has ended in dismissal for non-prosecution and thereafter an application was submitted for restoring the same, which was allowed. The other CRP No.168/2021 by the defendant therein is against the restoration. Hence the restoration deserves no interference and CRP discussed

earlier, CRP No.248/2022 will also stand dismissed since a separate suit was already initiated for redressing the grievance of the petitioner herein. Both CRP hence will stand dismissed. Sd/- P.SOMARAJAN JUDGE rkr-02/08 APPENDIX OF CRP 248/2022 PETITIONER ANNEXURES Annexure A1 TRUE COPY OF THE DEED DATED 9 /11 /2022 Annexure A2 TRUE COPY OF THE ORDER DATED 29TH OF NOVEMBER 2022, THE LEARNED SUBORDINATE JUDGE TIRUR //TRUE COPY// P.A.TO JUDGE

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com