

Benjamin vs Sarada

Benjamin vs Sarada

SooperKanoon Citation : sooperkanoon.com/1384200

Court : Kerala

Decided On : Aug-24-2023

Judge : Honourable Mr.Justice C.S.Dias

Appeal No. : OP(C)/1725/2023

Appellant : Benjamin

Respondent : Sarada

Judgement :

THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT THE HONOURABLE MR.JUSTICE C.S.DIAS THURSDAY, THE 24TH DAY OF AUGUST 2023 / 2ND BHADRA, 1945 OP(C) NO. 1725 OF 2023 speedy disposal of OS 620/2022 OF II ADDITIONAL MUNSIF COURT, NEDUMANGAD PETITIONER/S: BENJAMIN AGED 70 YEARS PANAVALAKOM, CHEKKALAKONAM, MULLASERI, KARAKULAM VILLAGE, NEDUMNAGADU, THIRUVANANTHAPURAM, PIN - BY ADVS. VISHNU BHUVANENDRAN B.ANUSREE RESHMA UNNIKRISHNAN RESPONDENT/S:

1 SARADA AGED 59 YEARS W/O BENJAMIN, RESIDING AT KUNNATHUKONAM KIZHAKKUMKARA PUTHEN VEEDU, PUTHUKULANGARA P.O, VELLANADU VILLAGE, NEDUMANGADU

TALUK, THIRUVANANTHAPURAM, PIN - 695541 2 NOBLE AGED 41 YEARS S/O SUDHAKARAN, CHENTHUPOORU, CHIRATHALKKAL VEEDU, VENGODU, VATTAPARA VILLAGE, THIRUVANANTHAPURAM, PIN - 695541 3 VISMAYA AGED 36 YEARS W/O NOBLE, CHENTHUPOORU, CHIRATHALKKAL VEEDU, VENGODU, VATTAPARA VILLAGE, THIRUVANANTHAPURAM, PIN - 695541 THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON

24.08.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.S DIAS,J.

----- Dated this the 24th day of
August, 2023

JUDGMENT

The original petition is filed to direct the Court of the Additional Munsiff-II, Nedumangad, to expeditiously dispose of OS No.620/2022, within a time frame to be fixed by this Court.

2. The petitioner has averred in the original petition

that, he is the third defendant in the above suit, which has been filed by the first respondent, seeking a decree for cancellation/setting aside of a document. Ext P1 suit was instituted on 19.8.2022. The petitioner has filed Ext P2 written-statement on 22.3.2023. The suit is being unnecessarily protracted. The pendency of the suit is causing hardship to the petitioner, who is a senior citizen. Hence, the original petition.

3. Heard; Sri.Vishnu Bhuvanendran, the learned counsel appearing for the petitioner on admission.

4. The Code of Civil Procedure, 1908 lays down the procedure to be followed by civil courts right from the institution of the suit till the execution of the decree.

5. It is trite, the supervisory jurisdiction of this

Court under Article 227 of the Constitution of India is to be exercised sparingly and in cases of exceptional rarity. The power under this Article casts a duty on this Court to keep Courts of the District Judicature and Tribunals within their bounds of authority and see that they discharge their functions as per the mandate prescribed under law. But, that does not mean that this Court is to intermeddle with the proceedings before the Courts/ Tribunals, at each and every stage, that too on the mere asking of parties, particularly to dispose of a suit in precedence to older pending matters.

6. On a perusal of the pleadings and materials on

record, it can be gathered that Ext P1 suit was instituted only on 19.8.2022 and the petitioner has filed a written-statement on 22.3.2023. It is not discernible as to whether the suit has been reached at the pre-trial stage. Thus, I am of the view that the suit is only at its nascent stage.

7. In *Shiju Joy.A vs. Nisha* [2021 (2) KHC 462], a

Division Bench of this Court has succinctly held that in cases pending before the Family Courts, if a litigant desires to get an out-of-turn disposal, then such person has to first move the Family Court by way of an interlocutory application stating the reasons for the expeditious consideration of the matter. Only if the Family Court rejects such request, the party can invoke the supervisory jurisdiction of this Court under Article 227 of the Constitution of India.

8. Recently, another Division Bench of this Court

in *Prema Joy vs. John Britto* [2023 LiveLaw (Ker) 235], following the principles in *Shiju Joy* (supra), has emphatically held that out-of- turn hearings cause injustice to other litigants. Deviation from the seniority, on the basis of the date of filing, shall be permitted only in exceptional cases and for genuine reasons. Merely because a litigant has the means or resources to approach this Court, with a prayer to expedite his case, he shall not be permitted to jump the queue or steal a march over other litigants, and get an undue advantage.

9. On an overall consideration of the pleadings and the principles laid down in the
aforecited

precedents, I do not find any extra-ordinary circumstance or pressing reasons to exercise the power of superintendence of this Court under Article 227 of the Constitution of India, to direct the court below to expeditiously dispose of the suit in question. There are no justifiable grounds made out in the original petition, to direct the out of turn disposal of the said suit, and upset the apple cart of the suits already listed for trial before the court below, where there is a huge backlog of suits and applications. Hence, this Court leaves it to the absolute discretion and wisdom of the court below to decide, whether the present suit is to be disposed of in precedence to older pending matters. It would be upto the petitioner to move the court below by filing an application, seeking for an out-of-turn disposal of the suit. If such an application is filed, the court below shall consider the same as per the principles laid down in *Shiju Joy and Prema Joy (supra)*.

With the above observations, the original petition is dismissed. sd/- sks/24.8.2023
C.S.DIAS, JUDGE APPENDIX OF OP(C) 1725/2023 PETITIONER EXHIBITS
Exhibit P1 TRUE COPY OF THE PLAINT FILED BY THE 1ST RESPONDENT
BEFORE THE MUNSIFF COURT, NEDUMANGAD AS O.S 620/2022 Exhibit P2
TRUE COPY OF THE WRITTEN STATEMENT FILED BY THE PETITIONER IN
O.S NO. 620/2022 OF MUNSIFF COURT , NEDUMANGAD. Exhibit P3 TRUE
COPY OF THE CASE HISTORY IN O.S. NO.620/ 2022 ON THE FILE OF THE
MUNSIFF COURT, NEDUMANGAD OBTAINED FROM E-COURTS WEBSITE
Exhibit P4 TRUE COPY OF THE JUDGMENT IN O.P (FC) NO.

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