

Shyla vs Sheela

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Court : Kerala

Decided On : Oct-25-2023

Judge : Honourable Mr. Justice Bechu Kurian Thomas

Appeal No. : OP(C)/2457/2018

Appellant : SHYLA

Respondent : Sheela

Advocate for Pet/Ap. : Sri. N.Ashok Kumar

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS WEDNESDAY, THE 25TH DAY OF OCTOBER 2023 / 3RD KARTHIKA, 1945 OP(C) NO. 2457 OF 2018 AGAINST THE ORDER THE ORDER DATED 08.08.2018 IN I.A.NO.370/2018 IN O.S.NO.175/2012 OF MUNSIF COURT, CHENGANNUR PETITIONER/PLAINTIFF : SHYLA, AGED 45 YEARS, D/O.SARASAMMA, PUTHUPARAMBIL HOUSE, ARANMULA VILLAGE FROM SHAJI SADANAM, KARACKADU MURI, MULAKKUZHA VILLAGE, CHENGANNUR TALUK. THIRUVANANTHAPURAM BY ADV N.ASHOK KUMAR RESPONDENT/1ST DEFENDANT : SHEELA, AGED

55 YEARS W/O.MURALEEDHARAN, MIDHUN NIVAS, KARACKADU MURI, MULAKKUZHA VILLAGE, CHENGANNUR TALUK. THIRUVANANTHAPURAM BY ADVS. SRI.K.M.ANEESH SRI.K.JAYARAJ THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 25.10.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: BECHU KURIAN THOMAS, J O.P.(C).No.2457 of 2018 Dated this the 25th day of October, 2023

JUDGMENT

Original petitioner challenges the order refusing to appoint an Advocate Commissioner.

2. Petitioner is the plaintiff in O.S.No.175/2012 on the files of the

Munsiffs Court, Chengannur. The respondent, in this original petition, who is the first defendant in the said suit, had also filed O.S.No.198/2012 before the same court, where the petitioner herein is the defendant therein. The plaint schedule item No.3 property in O.S. No.198/2012 is the same as the property, in O.S.No.175/2012. In the former suit, declaration of title is sought while in the latter an injunction is sought restraining trespass into the said property. When O.S.No.175/2012 was filed petitioner took out an ex parte Advocate Commission. In O.S.No.198/2012, the initial Advocate Commission appointed by court was followed by another Advocate Commissioner appointed due to the objections raised by the petitioner to the report. The second Advocate Commissioner in O.S.No.198/2012 even obtained the assistance of a Surveyor and measured the property and prepared a plan. Despite the above three Advocate Commission reports available, in the two suits relating to the same property, petitioner has sought for appointment of a fresh Commissioner.

3. The learned Munsiff, by the impugned order, found that the

matters that are sought to be ascertained by appointing a new Advocate Commissioner in O.S.No.175/2012 is the same matter that has already been

ascertained by the previous Commissioners, and therefore, there is no point in issuing successive commissions for ascertaining the very same facts. The learned Munsiff also noticed that the plaintiff in O.S.No.175/2012 had not filed any objection to the previous reports filed by the Advocate Commissioners.

4. I have heard Sri. N.Ashok Kumar, learned counsel for the petitioner and Sri. K.M.Aneesh, the learned counsel appearing for the respondent.

5. A perusal of the impugned order reveals that two Advocate

Commissioners were appointed in O.S.No.198/2012 while an ex parte Advocate Commissioner was appointed at the instance of the petitioner himself in O.S.No.175/2012. As rightly observed by the learned Munsiff, three Advocate Commission reports are available in respect of the same subject matter in the two separate suits, which are even connected to each other. The matters that are now sought to be ascertained in O.S.No.175/2012 relate to the same property that is scheduled as item no.3 in O.S.No.198/2012, which property has already been measured with the help of a Surveyor and identified and reported in the Commission report in O.S.No.198/2012. No objection has also been filed by the petitioner. Further the ex parte commission taken out at the instance of the petitioner in O.S.No.175/2012 is also available and nothing prevents the petitioner from examining the said Advocate Commission to bring in evidence, matters which he require.

6. Taking note of the reasons stated in the impugned order and

also on account of the existence of the three commission reports and the nature of the subject matter in both the suits being identical, this Court is of the view that, there is no reason to exercise the supervisory jurisdiction under Article 227 of the Constitution of India.

7. Hence I find no reason to interfere with the impugned order,

and this Original Petition is dismissed. sd/- BECHU KURIAN THOMAS JUDGE
AMV/02/11/2023 APPENDIX OF OP(C) 2457/2018 PETITIONER EXHIBITS
EXHIBIT P1 TRUE COPY OF PLAINT IN O.S.NO,175/2012

OF THE MUNSIFF'S COURT, CHENGANNUR. EXHIBIT P2 TRUE COPY OF PLAINT IN O.S.NO,198/2012 OF THE MUNSIFF'S COURT, CHENGANNUR DATED 19.7.2012. EXHIBIT P3 TRUE COY OF WRITTEN STATEMENT FILED BY DEFENDANTS IN O.S.NO.175/12 OF MUNSIFF'S COURT, CHENGANNUR. EXHIBIT P4 TRUE COPY OF WRITTEN STATEMENT IN O.S.NO,198/2012 OF THE MUNSIFF'S COURT, CHENGANNUR. EXHIBIT P5 TRUE COPY OF RE-SURVEY PLAN OF FILEDNO.228 OF MULAKKUZHA VILLAGE. EXHIBIT P6 TRUE COPY OF MAHAZAR AND ROUGH SKETCH DATED 28.6.2012 FILED BY ADVOCATE DIVYA UNNIKRISHNAN IN O.S.NO.175/2012. EXHIBIT P7 TRUE COPY OF REPORT MAHAZAR AND PLAN DATED 6.1.2017 FILED BY ADVOCATE T.R.GOVINDAN NAIR IN O.S NO.198/2012. EXHIBIT P8 TRUE COPY OF REPORT MAHAZAR AND PLAN DATED 17.10.2017 FILED BY ADVOCATE T.G.SASIDHARAN PILLAI IN O.S.198/2012. EXHIBIT P9 TRUE COPY OF COMMISSION APPLICATION IN IA.NO.370/18 IN O.S.NO,175/2012 DATED 5.3.2018 FILED BEFORE THE MUNSIFF'S COURT, CHENGANNUR. EXHIBIT P10 TRUE COPY OF ORDER IN IA.NO,370/2018 IN O.S.NO,175/2012 OF MUNSIFF'S COURT, CHENGANNUR. TRUE COPY