

Thampi vs Latha

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Court : Kerala

Decided On : Mar-18-2022

Judge : Honourable Mr. Justice a. Badharudeen

Appeal No. : OP(C)/312/2022

Appellant : Thampi

Respondent : LATHA

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE A. BADHARUDEEN
FRIDAY, THE 18TH DAY OF MARCH 2022 / 27TH PHALGUNA, 1943
AGAINST THE ORDER/JUDGMENT in I.A.No.427/2021 AND 994/2021
IN OS 255/2013 OF MUNSIFF COURT, KOTTARAKKARA
PETITIONERS/PETITIONERS: 1 THAMPI AGED 46 YEARS S/O.
PODIYAN, EDAKUNNIL VEEDU, DECENT MUKKU, 2 MANJU THAMPI
AGED 40 YEARS W/O. THAMPI, EDAKUNNIL VEEDU, DECENT
MUKKU, BY ADV T.R.RAJAN RESPONDENTS/2ND TO 7TH
RESPONDENTS:

1 LATHA W/O. CHANDRAN, EDAKUNNIL VEETIL, DECENT MUKKU,
2 RAMESAN S/O. CHANDRAN, EDAKUNNIL VEETIL, DECENT

MUKKU, 3 REMANI D/O. CHANDRAN, EDAKUNNIL VEETTIL, DECENT MUKKU, 4 VISWAMBHARAN 5 SURESH 6 REJANI THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 18.03.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 18th day of March, 2022 This Original Petition has been filed under Article 227 of the Constitution of India.

2. In this case, the learned Munsiff allowed Ext.P5

I.A.No.427/2021 in O.S.No.255/2013 and appointed a Commission and Surveyor with direction to deposit commission batta and surveyor batta at the rate of Rs.3,500/- and 2,000/- respectively on or before 23.10.2021. But the petitioner/plaintiff failed to deposit the amount and in consequence thereof, the learned Munsiff dismissed the application stating that Hence petition closed. A review petition I.A.No.994/2021 was filed to review the order, the same was also dismissed as per Ext.P8 order.

3. It appears that though the plaintiff failed to pay the

commission batta and surveyor batta within time, the learned Munsiff ought to have allowed the review petition, in the interest of justice and allowed the plaintiff to deposit the amount so as to get the commission report and surveyors plan to decide the case on merits.

4. Having considered the factual aspects involved as

discussed, I am of the view that Ext.P8 order is liable to be interfered and thereby I am inclined to set aside the same. Therefore, the petitioner is directed to deposit the commission batta and surveyor batta, as directed by the trial court, within a period of seven days from today. On such deposit, I.A.No.427/2021 shall stand restored back to file. Then, the trial court is directed to name the commissioner and Surveyor so as to get the report at the earliest in a case of the year 2013 coming under the five year old category, directed to be disposed of by this Court

as well as the Apex Court as part of reduction of five year old cases. Registry shall forward a copy of this judgment to the court below concerned, within seven days, for information and compliance. This Original Petition stands allowed as indicated above. Sd/- A. BADHARUDEEN JUDGE nkr APPENDIX OF OP(C) 312/2022 PETITIONER EXHIBITS Exhibit P1 TRUE COPY OF THE AMENDED PLAINT IN OS NO.255/2013 ON THE FILES OF THE MUNSIFF COURT, KOTTARAKARA. Exhibit P2 TRUE COPY OF THE WRITTEN STATEMENT IN OS NO.255/2013 ON THE FILES OF THE MUNSIFF COURT, KOTTARAKARA (WITH TYPED COPY). Exhibit P3 TRUE COPY OF THE ADDITIONAL WRITTEN STATEMENT IN OS NO.255/2013 ON THE Exhibit P4 TRUE COPY OF THE AFFIDAVIT AND PETITION IN IA NO.427/2021 IN OS NO.255/2013 ON

Exhibit P5 TRUE COPY OF ORDER DATED 13.09.2021 IN Exhibit

IN IA NO.994/2021 IN OS NO.255/2013 ON Exhibit P8 TRUE COPY OF ORDER DATED 18.11.2021 OF THE MUNSIFF COURT, KOTTARAKARA IN IA NO.994/2021 IN OS NO.255/2013.

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