

RAMLA Vs Lilly George

RAMLA Vs Lilly George

SooperKanoon Citation : sooperkanoon.com/1442182

Court : Kerala

Decided On : May-24-2022

Judge : Honourable Mr. Justice a. Badharudeen

Appeal No. : OP(C)/70/2022

Appellant : RAMLA

Respondent : Lilly George

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE A. BADHARUDEEN TUESDAY, THE 24TH DAY OF MAY 2022 / 3RD JYAISHTA, 1944 AGAINST THE COMMON ORDER IN I.A.NO.7694/2019 & I.A.No.1/2020 IN I.A.NO.7694/2019 ON THE FILE OF ADDITIONAL MUNSIFF COURT-II, ERNAKULAM PETITIONERS/DEFENDANTS: 1 RAMLA, AGED 60 YEARS, W/O.MUHAMMED KUNJU, MANATH HOUSE, THRIKKAKKARA CENTURY LANE, 2 MOHAMMED ANSARI, AGED 57 YEARS, KULIYANKAL HOUSE, NEAR COLLECTORATE, KAKKANAD P.O., ERNAKULAM, PIN - 682 030. BY ADVS. K.M.SANAL ANUP T PAUL RESPONDENTS/PLAINTIFFS: 1 LILLY GEORGE, AGED 59 YEARS, W/O.C.V.GEORGE, CHERUVILLIL HOUSE, SURABHI NAGAR, MIG 93, 2 LEAH SARA GEORGE, AGED 35 YEARS, D/O.C.V.GEORGE, CHERUVILLIL HOUSE,

SURABHI NAGAR, MIG 93, 3 LINJU GEORGE, AGED 29 YEARS, D/O.C.V.GEORGE, CHERUVILLIL HOUSE, SURABHI NAGAR, MIG 93, BY ADV. SRI.PEEYUS A.KOTTAM THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 24.05.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

This Original Petition has been filed by the defendants 1 and 2 in O.S.No.1539 of 2005

under Article 227 of the Constitution o

No.7694/2019, in the above suit passed by the learned Additional Munsiff-II, Ernakulam whereby two amendments sought for by the plaintiffs were allowed.

2. Heard the learned counsel for the petitioners as well as the learned counsel for the respondents.

3. At the time of hearing, the learned counsel for the petitioner would submit that

though in this Original Petition, th

raise the question of limitation in so far as

the amended reliefs are concerned

Shivakumar [2015 (3) KLT Suppl. 89 (SC)].

4. In the said decision, the Apex Court considered the scope of an amendment where the question of limitation has been expressly

raised by the other side and held

limitation.

5. Though the learned counsel for the respondents/plaintiffs opposed the minimum

prayer canvassed by the petitioners, the factual background of this case is that in the year 2005, plaintiffs filed the suit for permanent prohibitory injunction as well as fixation of boundary asserting title and possession over the plaint schedule property. But the plaintiffs wanted to incorporate plea of recovery possession also in view of the subsequent development and identification property as per the commission report obtained. Thus, prima facie it appears that the plea of limitation as raised by the petitioners is a matter to be decided by the trial court on merits. In view of the matter while confirming

the common order, it is specifically ordered that the plea of limitation raised by the defendants on the basis of the doctrine of relation back in relation to the prayer for recovery of possession shall be considered by the trial court while deciding the case finally on merits and keeping the said liberty in tact, this Original Petition is disposed of. Since the court below fixed 7 days time for filing additional written statement in view of the amendment and the same has been elapsed, the petitioners are directed to file additional written statement within a period of 15 days from today. Sd/- A.BADHARUDEEN, JUDGE. ww APPENDIX OF OP(C) 70/2022 PETITIONERS' EXHIBITS: EXHIBIT P1 TRUE COPY OF THE PLAINT IN O.S COURT, ERNAKULAM. EXHIBIT P2 TRUE COPY OF THE WRITTEN STATEMENT IN O.S 1539/2005 BEFORE THE MUNSIFF COURT, ERNAKULAM.

EXHIBIT P3 TRUE COPY OF THE SALE DEED NO.760/1976. EXHIBIT P4

ASSESSMENT REGISTER FOR THE YEAR 2000- 2001. EXHIBIT P8 TRUE COPY OF THE COMPLAINT FILED BY 1ST PLAINTIFF. EXHIBIT P9 TRUE COPY OF THE COMMISSION REPORT IN I.A.NO.7396/2006 IN O.S.NO.1539/2005 BEFORE THE MUNSIFF'S COURT, ERNAKULAM. EXHIBIT P10 TRUE COPY OF THE COMMON ORDER DATED I.A.NO.7406/2006. EXHIBIT P11 TRUE COPY OF THE ORDER DATED 06/02/2019 IN I.A.NO.6415/2009. EXHIBIT P12 THE TRUE COPY OF THE MEMO FILED BY THE COMMISSIONER. EXHIBIT P13 TRUE COPY OF THE COMMISSION REPORT DATED 07/08/2019. EXHIBIT P14 THE TRUE COPY OF THE OBJECTION TO COMMISSION REPORT. EXHIBIT P15 TRUE COPY OF THE

AMENDMENT APPLICATION, I.A.NO.7694/2019. EXHIBIT P16 TRUE COPY OF THE COUNTER AFFIDAVIT IN I.A.NO.7694/2019. EXHIBIT P17 TRUE COPY OF THE AMENDMENT APPLICATION, I.A.NO.1/2020 IN I.A.NO.7694/2019. EXHIBIT P18 TRUE COPY OF THE COUNTER AFFIDAVIT IN AMENDMENT APPLICATION, I.A.NO.1/2020 IN I.A.NO.7694/2019. EXHIBIT P19 TRUE COPY OF THE COMMON ORDER IN I.A. NO.7694/2019 & I.A.NO.1/2020 IN I.A. NO.7694/2019.

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