

Geetha Devi vs G.Sasibala

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SooperKanoon Citation : sooperkanoon.com/1445943

Court : Kerala

Decided On : Feb-14-2022

Judge : Honourable Mr. Justice a. Badharudeen

Appeal No. : OP(C)/171/2022

Appellant : Geetha Devi

Respondent : G.Sasibala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE A. BADHARUDEEN
MONDAY, THE 14TH DAY OF FEBRUARY 2022 / 25TH MAGHA, 1943
OP(C) NO. 169 OF 2022 AGAINST THE ORDER IN IA 2061/2019 IN AS
44/2018 OF III ADDITIONAL DISTRICT COURT,
THIRUVANANTHAPURAM

PETITIONERS/PETITIONERS/RESPONDENTS/PLAINTIFFS : 1
GEETHA DEVI AGED 65 YEARS WIFE OF LATE SASIDHARA
KARANAVAR, RESIDING AT TC 2/453(25) P.T.CHACKO NAGAR,
MEDICAL COLLEGE P.O., THIRUVANANTHAPURAM, PIN - 695 011. 2
SASIKALA AGED 38 YEARS DAUGHTER OF LATE SASIDHARA
KARANAVAR, RESIDING AT TC 2/453 (25), P T CHACKO NAGAR,

MEDICAL COLLEGE P.O., THIRUVANANTHAPURAM, PIN - 695 011.
BY ADVS. V.SURESH G.SUDHEER
RESPONDENT/CR.PETITIONER/APPELLANT/DEFENDANT :
G.SASIBALA AGED 45 YEARS DAUGHTER OF LATE SASIDHARA
KARANAVAR, REPRESENTED BY HER POWER OF ATTORNEY
HOLDER PRASAD, SON OF RAGHAVAN NAIR, HOUSE NO.239,
DHANVANTHARI BHAVAN, MUNDAKAYAM, KOTTAYAM, PIN - 686
513. BY ADVS. K.KUSUMAM K.KALESH R.S.REJITHA P.T.MARY ..2..
BENRAJ K.R. ACHUTHAN K. THIS OP (CIVIL) HAVING COME UP FOR
ADMISSION ON 09.02.2022, ALONG WITH OP(C).171/2022, THE
COURT ON 14.02.2022 DELIVERED THE FOLLOWING: ..3..

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE A. BADHARUDEEN
MONDAY, THE 14TH DAY OF FEBRUARY 2022 / 25TH MAGHA, 1943
OP(C) NO. 171 OF 2022 AGAINST THE ORDER IN IA 2062/2019 IN AS
34/2018 OF III ADDITIONAL DISTRICT COURT,
THIRUVANANTHAPURAM

PETITIONERS/PETITIONERS/RESPONDENTS/PLAINTIFFS : 1
GEETHA DEVI, AGED 65 YEARS, W/O. OF LATE SASIDHARA
KARANAVAR, RESIDING AT TC 2/453 (25), P T CHACKO NAGAR,
MEDICAL COLLEGE P.O., THIRUVANANTHAPURAM, PIN - 695 011. 2
SASIKALA AGED 38 YEARS DAUGHTER OF LATE SASIDHARA
KARANAVAR, RESIDING AT TC 2/453(25), P T CHACKO NAGAR,
MEDICAL COLLEGE P.O., THIRUVANANTHAPURAM, PIN - 695 011.
BY ADVS. V.SURESH G.SUDHEER
RESPONDENT/CR.PETITIONER/APPELLANT/DEFENDANT :
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HOLDER PRASAD, SON OF RAGHAVAN NAIR, HOUSE NO.239,
DHANVANTHARI BHAVAN, ..4.. MUNDAKAYAM, KOTTAYAM, PIN -
686 513. BY ADVS. K.KUSUMAM K.KALESH R.S.REJITHA P.T.MARY

ACHUTHAN K. THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 09.02.2022, ALONG WITH OP(C).169/2022, THE COURT ON 14.02.2022 DELIVERED THE FOLLOWING: ..5..

A.BADHARUDEEN, J.

----- Dated this the 14th day
of January, 2022

JUDGMENT

Order in I.A.No.2061 of 2019 dated 09.12.2021 in

A.S.No.44 of 2018 on the file of the Additional District Judge-III, Thiruvananthapuram is under challenge in O.P.(C)No.169 of 2022, as opted by the respondents in the appeal.

2. Whereas, in O.P.(C)No.171 of 2022, order in

I.A.No.2062 of 2019 dated 09.12.2021 in A.S.No.34 of 2018 is under challenge at the instance of the respondents in the appeal. The petitioners contended that two independent appeals against composite decree involving suit and counter claim would not sustain and accordingly, I.A.No.2061 of 2019 and I.A.No.2062 of 2019 were filed before the Appellate Court. The Appellate Court considered the prayer and after relying on the decisions reported in [2010(4) KHC 575], Thomas and Others v. Dr.Sudha and ..6.. Others, [2017 KHC 5712], Kishori Devi and Others v. Rameswar Prasad and [2020 KHC 4730], Durgasingh

Chowhan and another v. Rajendra Kothiyan & Others held

that separate appeals filed in the given facts of the case also are maintainable.

3. At the time of hearing, the learned counsel for

the petitioners would submit that when composite decree is passed whereby the pecuniary jurisdiction of the decree involves that of this Court, by filing separate appeals, pecuniary jurisdiction of the District Court can be resorted to. Whether such a course of action is permissible is the legal issue in this matter. Therefore, the said legal question required to be addressed in these original petitions.

4. But the learned counsel for the respondent

would submit that delayed tactics being played to avoid disposal of two appeals pending from 2018 onwards, where the subject matter is the partition of the plaint schedule items.

5. Having heard both sides, I am of the view that

as per the settled law, filing of one appeal against suit and counter claim is permissible, when both challenges were taken in one appeal. Similarly, there is no legal bar in filing two separate ..7.. appeals also. In view of the matter, the learned District Judge is right in dismissing I.A.No.2061 of 2019 and I.A.No.2062 of 2019.

6. As regards the legal question mooted by the

learned counsel for the petitioners, the same does not arise in this case, since the pecuniary value of the suit, if calculated in any way, the same is within the limit of pecuniary jurisdiction of the District Court. Therefore, I am inclined to dismiss these original petitions, leaving the legal question to be decided in an appropriate proceedings later. Accordingly, these original petitions are dismissed. Sd/- A.BADHARUDEEN, JUDGE rkj ..8.. APPENDIX OF OP(C) 169/2022 PETITIONER EXHIBITS Exhibit P1 TRUE COPY OF THE COMMON JUDGMENT IN OS

NO.89/2014 AND OS NO.24/2017 PASSED BY THE 1ST ADDITIONAL SUB COURT, THIRUVANANTHAPURAM DATED 31/8/2017.

Exhibit P2 TRUE COPY OF THE AS NO.34 OF 2018 FILED BY THE RESPONDENT BEFORE THE DISTRICT COURT, THIRUVANANTHAPURAM DATED 12/1/2018. Exhibit P3 TRUE COPY OF THE AS NO.44 OF 2018 FILED

BY THE RESPONDENT BEFORE THE DISTRICT COURT, THIRUVANANTHAPURAM DATED 9/2/2018. Exhibit P4 TRUE COPY OF THE IA NO.2061 OF 2019 FILED BY THE PETITIONER BEFORE THE DISTRICT COURT THIRUVANANTHAPURAM DATED 21/6/2019. Exhibit P5 TRUE COPY OF THE STATEMENT OF OBJECTION FILED BY THE POWER OF ATTORNEY OF THE RESPONDENT DATED Exhibit P6 TRUE COPY OF THE ORDER IN IA NO.2061 OF 2019 IN AS NO.44 OF 2019 DATED COURT-III, THIRUVANANTHAPURAM. ..9.. APPENDIX OF OP(C) 171/2022 PETITIONER EXHIBITS Exhibit P1 TRUE COPY OF THE COMMON JUDGMENT IN O.S.NO.89/2014 AND O.S.NO.24/2017 PASSED BY THE 1ST ADDITIONAL SUB COURT, THIRUVANANTHAPURAM DATED Exhibit P2 TRUE COPY OF THE A.S.NO.34 OF 2018 FILED BY THE RESPONDENT BEFORE THE DISTRICT COURT, THIRUVANANTHAPURAM DATED 12/1/2018. Exhibit P3 TRUE COPY OF THE A.S.NO.44 OF 2018 FILED BY THE RESPONDENT BEFORE THE DISTRICT COURT, THIRUVANANTHAPURAM DATED 9/2/2018. Exhibit P4 TRUE COPY OF THE IA NO.2062 OF 2019 FILED BY THE PETITIONER BEFORE THE DISTRICT COURT THIRUVANANTHAPURAM DATED 21/6/2019. Exhibit P5 TRUE COPY OF THE STATEMENT OF OBJECTION FILED BY THE POWER OF ATTORNEY OF THE RESPONDENT DATED Exhibit P6 TRUE COPY OF THE ORDER IN IA NO.2062 OF 2019 IN AS NO.34 OF 2019 DATED COURT-III, THIRUVANANTHAPURAM.