

Jacob Mathew vs John Mathew

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SooperKanoon Citation : sooperkanoon.com/1470447

Court : Kerala

Decided On : Jun-30-2022

Judge : Honourable Mr. Justice P.Somarajan

Appeal No. : FAO (RO)/261/2014

Appellant : Jacob Mathew

Respondent : John Mathew

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.SOMARAJAN
THURSDAY, THE 30TH DAY OF JUNE 2022 / 9TH ASHADHA, 1944
AGAINST THE DECREE AND JUDGMENT DATED 23.06.2014 IN AS
148/2010 OF SUB COURT,KOTTARAKKARA AGAINST THE DECREE
AND JUDGMENT DATED .09.09.2010 IN OS 4/2004 OF MUNSIFF
COURT, PUNALUR APPELLANT/1ST RESPONDENT/PLAINTIFF:

JACOB MATHEW AGED 54 YEARS S/O.K.MATHAI, KALLUMKADAVU,
ELLUMVILA VEETIL, PATHANAPURAM VILLAGE, PATHANAPURAM
TALUK, KOLLAM DISTRICT. SRI.P.CHANDRASEKHAR SRI.P.K.ABDU
RAHEEM SRI.SOORAJ T.ELENJICKAL RESPONDENTS/APPELLANT

& RESPONDENTS 2 TO 4/DEFENDANTS: 1 JOHN MATHEW AGED 66 YEARS S/O.K.MATHAI, ELLUMVILA VEEDU, KALLUMKADAVU, PATHANAPURAM TALUK, KOLLAM DISTRICT, 689685. 2 THOMAS MATHEW AGED 64 YEARS S/O.K.MATHAI, THANKAM, MAMANGALAM, PALARIVATTOM, ERNAKULAM DISTRICT, 682025.

3 GRACY BABU AGED 53 YEARS D/O.K.MATHAI, PUTHENPURACKAL VEEDU, MANJAKKALA, ADOOR TALUK, 691508.

4 LISSY POULOSE AGED 51 YEARS D/O.K.MATHAI, OLICKAL HOUSE, MANNUR, KEEZHILLAM, PERUMBAVOOR, ERNAKULAM DISTRICT, 683542. SRI.K.K.CHANDRAN PILLAI (SR.) SMT.P.J.FLONY SMT.G.LEKHA SRI.SAJU N.A. THIS FIRST APPEAL FROM ORDER - REMAND ORDER HAVING COME UP FOR HEARING ON 30.06.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

In a suit for partition, fixation of boundary and for a consequential injunction, a decree was granted by the trial court against which an appeal was preferred. The First Appellate Court set aside the decree and judgment of the trial court for the sole purpose of deciding the counterclaim raised by the 1st defendant.

2. It is not permissible to remand the

matter back to the trial court for the said purpose in view of the legal position settled by this Court in Gopalakrishnan and Another v. Ponnappan and others [2021 (5) KHC 548] followed by the decision of the Apex Court in Bhairab Chandra Nandan v. Ranadhir Chandra Dutta (1988 KHC 883). The First Appellate Court is duty-bound to address all issues involved in the suit and any issue, which was not taken up either due to a mistake or omission on the part of the trial court. As such, the order of remand is hereby set aside. The parties shall appear before the First Appellate Court on 25.07.2022 to proceed further in the matter. The appeal is allowed accordingly. No costs. Sd/- P.SOMARAJAN JUDGE SPV