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Upendra Narayanan vs K.K.Udayan

Upendra Narayanan vs K.K.Udayan

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Court : Kerala Orders

Decided On : Apr-08-2022

Judge : Honourable Mrs. Justice Shircy V.

Appeal No. : RSA/1207/2015

Appellant : Upendra Narayanan

Respondent : K.K.Udayan

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MRS. JUSTICE SHIRCY V. FRIDAY, THE 8TH DAY OF APRIL 2022 / 18TH CHAITHRA, 1944 RSA NO. 1207 OF 2015 AGAINST THE JUDGMENT & DECREE IN AS 50/2014 OF PRINCIPAL SUB COURT, NORTH PARAVUR

AGAINST THE JUDGMENT & DECREE IN OS 409/2008 OF MUNSIFF COURT, ALUVA APPELLANT/RESPONDENT NO. 1/PLAINTIFF: UPENDRA NARAYANAN S/O.NARAYANA PANIKKER, AGED 65 YEARS, RESIDING AT KUNNAYYATH HOUSE,KOTHAKULAM KARA, ANGAMALY. BY ADVS. SRI.K.R.VINOD MS.JENCY SUSAN JOSE SRI.V.SRI NATH RESPONDENTS/APPELLANT NOS. 1 TO 3 &

RESPONDENT NOS. 2 &3/DEFENDANTS: 1 K.K.UDAYAN AGED 61 YEARS, S/O.KAVUKUTTY NAMPISHTATHIRI, KOIKKAL MADATHIL, RESIDING AT "PRANAVAM", POOZHICHIRA ROAD, THIRUVANNOOR, KOZHIKODU 673 004. 2 K.K. ASOKAN AGED 61 YEARS, S/O.KAVUKUTTY NAMPISHTATHIRI, KOIKKAL MADATHIL, RESIDING AT BHAVANA, POOPPANI ROAD, PERUMBAVOOR 683542. 3 K.K. SHOBHANA, AGED 52 YEARS, W/O.GOPALAKRISHNA IYYER, KARTHIKA, VELLANTHARA, CHITTOOR, PALAKKAD - 678 101. 4 K. SOMA VARMA AGED 62 YEARS, S/O.KAVUKUTTY NAMPISHTATHIRI, CHETHIYATHU MANA, NORTH PARAVUR - 683 513. R.S.A. 1207 & 1208/2015 5 K.K. VIJAYAN AGED 64 YEARS, S/O.KAVUKUTTY NAMPISHTATHIRI, KOIKKAL MADOM KIZHAKKUM BHAGAM, KANJOOR, NORTH PARAVUR 683 513. R1 BY ADVS. SRI.VPK.PANICKER SMT.K.V.RESHMI THIS REGULAR SECOND APPEAL HAVING BEEN FINALLY HEARD ON 23.03.2022, ALONG WITH RSA.1208/2015, THE COURT ON 08.04.2022 DELIVERED THE FOLLOWING: R.S.A. 1207 & 1208/2015

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MRS. JUSTICE SHIRCY V. FRIDAY, THE 8TH DAY OF APRIL 2022 / 18TH CHAITHRA, 1944 RSA NO. 1208 OF 2015 AGAINST THE JUDGMENT & DECREE IN AS 49/2014 OF PRINCIPAL SUB COURT, NORTH PARAVUR AGAINST THE JUDGMENT & DECREE IN OS 397/2008 OF MUNSIFF COURT, ALUVA APPELLANT/RESPONDENT/DEFENDANT: UPENDRA NARAYANAN S/O.NARAYANA PANIKKER, AGED 65 YEARS, RESIDING AT KUNNAYYATH HOUSE,KOTHAKULAM KARA, ANGAMALY. BY ADVS. SRI.K.R.VINOD MS.JENCY SUSAN JOSE SRI.V.SRI NATH RESPONDENTS/APPELLANTS/PLAINTIFFS: 1 K.K.UDAYAN AGED 61 YEARS S/O.KAVUKUTTY NAMPISHTATHIRI, KOIKKAL MADATHIL, RESIDING AT " PRANAVAM" POOZHICHIRA ROAD, THIRUVANNOOR, KOZHIKODE 673 004. 2 K.K.ASOKAN AGED 61 YEARS S/O.KAVUKUTTY NAMPISHTATHIRI, KOIKKAL

MADATHIL,RESIDING AT BHAVANA, POOPPANI ROAD, PERUMBAVOOR 683 542. 3 K.K.SHOBHANA AGED 52 YEARS W/O.GOPALAKRISHNA IYYER, KARTHIKA, VELLANTHARA, CHITTOOR, PALAKKAD 678 101. R.S.A. 1207 & 1208/2015 R1 BY ADVS. SRI.VPK.PANICKER SMT.K.V.RESHMI THIS REGULAR SECOND APPEAL HAVING BEEN FINALLY HEARD ON 23.03.2022, ALONG WITH RSA.1207/2015, THE COURT ON 08.04.2022 DELIVERED THE FOLLOWING: R.S.A. 1207 & 1208/2015

JUDGMENT

(R.S.A. Nos. 1207 & 1208 of 2015) Dated this the 8th day of April, 2022 The appellant in R.S.A. No. 1207 of 2015 has filed O.S. No. 409 of 2008 against the respondents/defendants. Another suit was fled by the respondents against this appellant as O.S. No. 397 of 2008. Both the cases were tried together by the learned Munsiff, Aluva and by a common judgment decreed O.S. No. 409 of 2008 and dismissed O.S. No. 397 of 2008. The said

judgment and decree were challenged before the appellate court.

2. In appeal, the judgment and decree of the Munsiff Court

in O.S. No. 397 of 2008 were set aside and the suit was decreed restraining the defendant/appellant from trespassing into plaint A to D schedule properties,cutting open a new pathway through the property, from interfering with the peaceful possession of the properties and also from causing obstruction in constructing a compound wall on the eastern boundary of the plaint A and B schedule properties. The judgment and decree in O.S. No. 409 R.S.A. 1207 & 1208/2015 of 2008 were also set aside and the suit was dismissed without costs. Challenging the said judgment and decree, these appeals have been preferred by the plaintiff in O.S. No. 409 of 2008.

3. During the pendency of these appeals, as suggested by

both parties this matter was referred to the Mediator for settlement talk. But it was not settled. Later, the dispute has been amicably settled out of court and a settlement agreement was entered into between the parties. The compromise petition entered into between the appellant as well as the respondents has been filed as I.A. No. 1 of 2022 in R.S.A. No. 1208 of 2015.

4. As the dispute has been amicably settled between the

parties,the joint statement appended with a plan, is accepted and appeals are disposed of accordingly. As per the terms of the agreement it is made clear that the decree of injunction passed against the appellant in R.S.A. No. 1208 of 2015 (the defendant in O.S 397/2008) restraining him from trespassing into plaint A and C schedule properties, shall remain in tact.

5. Therefore, R.S.A. No. 1208 of 2015 is to be disposed of

accepting the terms and conditions entered into between the R.S.A. 1207 & 1208/2015 parties in the compromise agreement dated 31 st January 2022 and marked as I.A. No.1 of 2022. In the result, R.S.A. No. 1208 of 2015 is disposed of in terms of the mutual agreement narrated in I.A. No. 1 of 2022. I.A. No. 1 of 2022 appended with the plan will form part of the decree. R.S.A. No. 1207 of 2015 is dismissed as not pressed. No costs. Sd/- SHIRCY V JUDGE sb 1 FILEDON: c9~|3)L-- EFORE THE HONOURABLE HIGH COURT OF KERALA ERNAKULAM I'A. No. of 2022 ln R.S.A No. 1208 of 2015 Upendra Narayanan Appellant Vs. K.K.Udayan & others Respondents L// q,` 7(3)2- MEMORANDUM OF COMPROMISE ENTERED INTO_ BETWEEN THE APPELLANT AND RESPONDENTS 1 |Q uv>cJ2'~ C5433 a 3c'_pot_ r` r+,fuin##.

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I,yhitwJ1ul` BEFORE THE HONOURABLE HIGH COURT OF KERALA ERNAKULAM I.A. No. Of 2022 ln R.S.A No. 1208 of 2015 Upendra Narayanan Appellant Vs. K.K.Udayan & others Respondents a INDEX Sl.No. CONTENTS Pages NOs. Memorandum of Compromise 1-3

2. ALn_nexure-1: Sy. Sketch of properties of the

appellant and lst respondent. Dated this the 28th day of February 2022. Advocate BEFORE THE HONOURABLE HIGH COURT OF KERALA I.A. NO. jn\ of 2022 R.S.A No. 1208 of 2015 Upendra Narayanan \,^ Appellant offrft` 7#r9 Vs. L' K.K.Udayan & others Respondents ?~. MEMO&ANDUM OF COMPROMISE ENTERED INTO BETWEEN THE 31Z,\fro~ APPELLANT AND RESPONDENTS 1 TO 3 LJ r>cJ2|y' c3rf. g>3 a 3 d%O|Dc_ rl The appellant and respondents 1 to 3 have agreed to settle the above appeal on the following terms:

(i) The above parties agree that the judgment and decree dated

Judge, North Paravur, on appeal from the judgment ancl decree dated 30/10/2012 in O.S. No. 397/2008 on the f.ile of the Munsiff's Court Aluva which is the subject matter of the above appeal, be modified as follows: (ii) The lst respondent (2nd plaintiff in O.S. 397/2008) has agreed to sell and the appellant (defendant .in O.S.397/2008) has agreed to purchase an extent of 2.02 ares (5 cents) in Sy. No. District, forming the southern part of Plaint 8 schedule property, along with the right of way through the Plaint D schedule way, over an extent of 80.6m from the tarred road on IVife - y2r the north towards south and through the bell mouth of extent 0.21 ares(0.516 cents carved out on the south western corner of plaint 8 schedule property, specifically described in the sketch produced and marked as Annexure 1, appended hereto. Respondents 2 and 3 (plaintiffs 2 and 3 in O.S.397/2008) also agree to the lst respondent (2nd plaintlff in O.S. 397/2008) In using the Plaint D schedule way, over an extent of 80.6m from the tarred road on the north towards south.

(iii) On purchase of the property and right of way described above,

rl the parties agree that the decree of permanent prohibitory injunction restraining the appellant/defendant from trespassing into Plaint 8 and D Schedule property shall be modified permitting the appellants/defendant to have access to the plaint A schedule property in O.S No. 409/2008 of the Munsiff Court, Aluva through the property of extent 2.02 ares purchased by the appellant, shown in annexure - 1 produced herewith. (iv) It is mutually agreed that the decree of injunction passed against the appellant/defendant in R.S.A No. 1208/2015 from trespassing into plaint A and C schedule property shall remain intact.

(v) It is mutually agreed between the 2nd plaintiff and defendant in

O.S No. 397/2008 of the Munsiff Court, Aluva that the defendant will be at liberty to construct a gate on the southern f= ye, side of the eastern boundary of the plaint 8 schedule property so as to have access into the 2.02 ares of property being purchased by him.

(vi) The appellant/plaintiff in R.S.A No. 1207/2015 shall withdraw the regular second appeal as not pressed.

(vii) The parties shall suffer their respective costs. Dated this the5/ 4day of January 2022 n Appellant: Upendra Narayanan Advocate for Appellant: Respondents:

1. K.K.Udayan

2. K.K.Asokan

3. K.K.Shobhana Advocate for the Respondents: -26Jcky

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DISTRICT : ERNAKULAM giv- JP I TALUK :ALUVA BLOCK NO: 29 VILLAGE : KIZHAKKUMBHAGAM SURVEY NO : 218/11 Scale lcm= 10m

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