

Vasudevan vs Radhakrishnan

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Court : Kerala

Decided On : Oct-21-2022

Judge : Honourable Mr.Justice C.S.Dias

Appeal No. : OP(C)/2011/2022

Appellant : Vasudevan

Respondent : Radhakrishnan

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE C.S.DIAS FRIDAY, THE 21ST DAY OF OCTOBER 2022 / 29TH ASWINA, 1944 OP(C) NO. 2011 OF 2022 IA 1527/2022 OF PRINCIPAL MUNSIF COURT, PALAKKAD
PETITIONER: VASUDEVAN AGED 47 YEARS S/O PONNAPPAMOOTHAN, KARNAKI NAGAR, VADAKKANTHARA POST, MOOTHANTHARA, PALAKKAD, PIN - 678012 BY ADV R.HARISHANKAR RESPONDENTS:

1 RADHAKRISHNAN AGED 44 YEARS S/O PONNAPPAMOOTHAN, "PRANAVAM", KARNAKI NAGAR, VADAKKANTHARA POST, MOOTHANTHARA, PALAKKAD PIN - 678012 2 P.LEELA W/O.

GOPALAN, 49/86, ARYAKULAM, KOZHIPPARAMBU, VADAKKANTHARA, PALAKKAD PIN - 678012 3 P.RATHNAM W/O. KUNHUNNI, AMBALATH (H), JOURNALIST VILLAGE, PANCHAYATH ROAD JUNCTION, KUZHIVELPPADI, EDATHALA PIN - 683561 4 P.BABY W/O. KANAKARAJAN, KARNAKI NAGAR, PIN - 678501 5 P.SUJATHA W/O. BHASKARAN, 223/1, KARNAKI NAGAR, MOOTHANTHARA, KODUVAYUR, PIN - 678501 6 CHANDRAN S/O. KUPPUANKUTTY, PIRAYIRI AYYAPPANKAVU, 10/242,

OP(C) NO.2011 OF 2022 2 7 RAJESH S/O. CHANDRAN, PIRAYIRI AYYAPPANKAVU, 10/242, 8 RADHIKA D/O. CHANDRAN, PIRAYIRI AYYAPPANKAVU, 10/242, 9 LATHIKA D/O. CHANDRAN, PIRAYIRI AYYAPPANKAVU, 10/242, THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 21.10.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: OP(C) NO.2011 OF 2022 3 Dated this the 21st day of October, 2022

JUDGMENT

Aggrieved by Ext.P10 order passed in I.A No.1527/2022 in O.S.No.278/2019 of the Court of the Munsiff (Principal), Palakkad, the first defendant in the suit has filed the original petition. The first respondent in the original petition is the plaintiff and the respondents 2 to 9 are the defendants 2 to 9 before the court below.

2. The facts in brief, relevant for the determination of

the original petition, are: the petitioner had filed O.S. No.555/2016 before the Court of the Additional Munsiff, Palakkad, against the first respondent for a decree of permanent prohibitory injunction and fixation of

boundary. During the pendency of the suit, the first respondent filed O.S. No.278/2019, against the petitioner and the respondents 2 to 9, for a decree of partition. The first respondent has resisted O.S. No.555/2016 by filing Ext.P3 written statement and Ext.P4 additional written statement. Then, the first respondent filed O.P.(Transfer)

OP(C) NO.2011 OF 2022 4 No.47/2020 before the Court of the District Judge, Palakkad, for the transfer of O.S No.555/2016 from the Court of the Additional Munsiff to the Court of the Principal Munsiff, where O.S. No.278/2019 is pending. The learned District Judge, by Ext.P7 order, allowed the transfer petition. The learned District Judge specifically observed that the question of joint trial of the two suits can be considered by the trial court, which would save time and energy. Subsequent to Ext.P7 order, the first respondent filed I.A No.1527/2022 (Ext.P8) for the

consolidation and joint trial of the two suits. The petitioner opposed the same through Ext.P9 counter statement. The court below, by the impugned Ext.P10 order, has allowed Ext.P8 application. Ext.P10 is invalid, irregular and improper. Hence, the original petition.

3. Heard; Sri.R.Harishankar, the learned counsel appearing for the petitioner.

4. The point is whether there is any error or illegality in Ext.P10 order. OP(C) NO.2011 OF 2022 5

5. On an analysis of the pleadings and materials on record, it can be gathered that O.S. Nos.555/2016 and devolved on the parties through Ext.P2 will executed by their predecessor-in- interest.

6. O.S. No.555/2016 is filed for fixation of boundary and the latter suit i.e. O.S. No.278/2019 is for a decree of partition.

7. The learned District Judge, by Ext.P7 order, taking

note of the pendency of a connected suit in respect of the same property ordered the withdrawal and transfer of O.S. No.555/2016 from the Court of the Additional Munsiff to the Court of the Principal Munsiff, and left it to the discretion of the learned Principal Munsiff to consider whether the suits will have to be consolidated and jointly tried.

8. The learned Principal Munsiff, after appreciating the fact that the suits are in respect of the same property, by Ext.P10 order, deemed it fit to order the joint trial

of OP(C) NO.2011 OF 2022 6 the suits.

9. It is trite, even if all the parties are not the same

in both suits, joint trial can be ordered. I find the course adopted by the court below to be justifiable and proper because if the trial of both suits are consolidated, it would save precious judicial time and avoid multiplicity of proceedings, especially recording of evidence. Moreover, I do not find any prejudice being caused to the petitioner by the joint trial of the two suits. There is no error or infirmity in Ext.P10 order, warranting interference by this Court under Article 227 of the Constitution of India. The original petition fails and is hence dismissed.

Sd/- C.S.DIAS, JUDGE rmm21/10/2022 OP(C) NO.2011 OF 2022 7 APPENDIX OF OP(C) 2011/2022 PETITIONER EXHIBITS Exhibit P1 TRUE COPY OF THE PLAINT DATED 03.07.2016 IN O.S.NO.555/2016 ON THE FILES OF ADDITIONAL MUNSIFF'S COURT, PALAKKAD. Exhibit P2 TRUE COPY OF THE WILL NO.36/1997 DATED 31.01.1997 OF SRO, PALAKKAD Exhibit P3 TRUE COPY OF THE WRITTEN STATEMENT DATED 17.09.2016 IN O.S.NO.555 OF 2016. Exhibit P4 TRUE COPY OF THE ADDITIONAL WRITTEN STATEMENT DATED 15.10.2018 FILED BY 1ST RESPONDENT IN O.S.NO.555/2016 Exhibit P5 TRUE COPY OF THE PLAINT DATED 14.06.2019 IN O.S.NO.278/2019 ON THE FILES OF PRINCIPAL MUNSIFF'S COURT, PALAKKAD. Exhibit P6 TRUE COPY OF THE WRITTEN STATEMENT DATED 03.11.2020 IN O.S.NO.278/2019 ON THE FILES OF PRINCIPAL MUNSIFF'S COURT, PALAKKAD. Exhibit P7 TRUE COPY OF THE ORDER DATED 01.10.2020 IN OP (TRANSFER) NO.47 OF 2020 OF DISTRICT COURT, PALAKKAD. Exhibit P8 TRUE COPY OF THE IA NO.1527/2022 DATED 15.07.2022 IN O.S.NO.278 OF 2019. Exhibit P9 TRUE COPY OF THE COUNTER STATEMENT DATED 16.07.2022 FILED BY PETITIONER IN EXT.P8. Exhibit P10 TRUE COPY OF THE ORDER DATED 10.08.2022 IN EXT.P8 FOR JOINT TRIAL RENDERED BY PRINCIPAL MUNSIFF'S COURT, PALAKKAD.