

Khadeeja vs Jameela

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Court : Kerala

Decided On : Jul-29-2021

Judge : Honourable Mr. Justice Sunil Thomas

Appeal No. : WP(C)/9141/2021

Appellant : Khadeeja

Respondent : Jameela

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE SUNIL THOMAS
THURSDAY, THE 29TH DAY OF JULY 2021 / 7TH SRAVANA, 1943
WP(C) NO. 9141 OF 2021 PETITIONER/S: KHADEEJA AGED 42
YEARS D/O. UMMER, SRAMBIKKAL HOUSE, H.NO.26/68A,
VIDHYANAGAR ROAD, KALAMASSERY, ERNAKULAM DISTRICT. BY
ADVS. C.Y.VINOD KUMAR SRI.C.ANILKUMAR (KALLESSERIL)
SMT.P.B.MALINI RAO RESPONDENT/S: 1 JAMEELA, W/O. LATE
ABDULLAKUTTY, SRAMBIKKAL HOUSE, H.NO.26/68A,
VIDHYANAGAR ROAD, KALAMASSERY, ERNAKULAM DISTRICT-
683104. 2 ABDUL NISSAR, S/O. ABDULLAKUTTY, SRAMBIKKAL
HOUSE, H.NO.26/68A, VIDHYANAGAR ROAD, KALAMASSERY,

ERNAKULAM DISTRICT-682022. 3 THE REVENUE DIVISIONAL OFFICER, OFFICE OF THE REVENUE DIVISIONAL OFFICE, FORT KOCHI, ERNAKULAM-682001. BY ADVS. P.SANJAY A.PARVATHI MENON PAUL VARGHESE (PALLATH) P.A.MOHAMMED ASLAM KIRAN NARAYANAN PRASOON SUNNY RAHUL RAJ P. R3 - SRI.K.P.HARISH, SENIOR GOVERNMENT PLEADER THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 29.07.2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: WP(C) NO. 9141 OF 2021 2

JUDGMENT

The petitioner is the daughter-in-law of the first respondent. The second respondent is her husband. She assails Ext.P4 interim order passed by the third respondent in an application filed by the first respondent, invoking the provisions under the maintenance and Welfare of Parents and Senior Citizens Act, 2007. According to the first respondent, her relation with her son and the daughter-in-law was strained and hence her son and daughter-in-law may be directed to vacate the building. The learned Tribunal, before whom parties appeared and filed their objections as an interim measure directed that a separate stair case should be built from the ground floor to the upstairs, wherein the first respondent can live and enjoy her life. Thereby, the relation between the parties can be maintained.

2. The precise contention of the petitioner is that,

the petition is not maintainable and that the mother is not an aggrieved person as contemplated under the Act. The WP(C) NO. 9141 OF 2021 3 reason was that mother had another two storied building of her own, which was referred to, by the petitioner in her objections. The mother could shift to that building and maintain peaceful life. It was replied by the first and second respondents that the other building that belonged to the first respondent is an extremely dilapidated building through the lower portion was let out to another person. In the above circumstances, the petitioner cannot be heard to contend that the mother should shift to that house

3. Essentially, the petitioner has no right over either

of the properties. Admittedly, the second respondent is the owner of the disputed building. The first respondent is a widow. In this circumstances, the petitioner cannot be heard to contend that mother should shift from the building, since the essential enquiry to be conducted under the Act, was whether the first and second respondents are liable to be ordered to vacate the house at the instance of the aggrieved person.

4. I. Having considered the entire facts, I find that

the learned Tribunal has passed an interim order balancing WP(C) NO. 9141 OF 2021 4 the interest of both sides. Hence, I find no reason to interfere in the interim order, which will continue. Hence, The Writ Peititon fails and is dismissed. Sd/- SUNIL THOMAS, JUDGE R.AV WP(C) NO. 9141 OF 2021 5 APPENDIX OF WP(C) 9141/2021 PETITIONER EXHIBITS EXHIBIT P1 TRUE COPY OF THE ORDER DATED 7.9.2019 IN CMP.NO.1901/19 IN MC.NO.24/18 ON THE FILES OF THE JFMC, KALAMASSERY. EXHIBIT P2 TRUE COPY OF THE COMPLAINT DATED 22.2.20 SUBMITTED BY THE 1ST RESPONDENT. EXHIBIT P3 TRUE COPY OF THE OBJECTION DATED 21.1.21 SUBMITTED BY THE PETITIONER. EXHIBIT P4 TRUE COPY OF THE ORDER DATED 23.02.2021 PASSED BY THE 3RD RESPONDENT. RESPONDENT'S/S . EXHIBITS: TRUE COPY OF THE OBJECTIONS PREFERRED EXHIBIT R1 BY THE PETITIONER IN MC.18/2018 DATED 29.09.2018. EXHIBIT R2 TRUE COPY OF THE INTERIM PROTECTION

ORDER IN CMP.NO.879/2018 IN

MC.NO.18/2018 DATED 22.05.2018. EXHIBIT R3 TRUE COPIES OF MC.24/2018 DATED 26.06.2018. EXHIBIT R4 TRUE COPY OF DISCHARGE SUMMARY DATED 3.12.2005. EXHIBIT R5 TRUE COPY OF THE DOCTOR'S CERTIFICATE DATED 16.2.2019. EXHIBIT R6 TRUE COPY OF THE POLICE REPORT DATED EXHIBIT R7 TRUE COPY OF THE OBJECTION TO EXT.P2.