

P.Sreekumar, vs Kamaludeen

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Court : Kerala

Decided On : Sep-30-2021

Judge : Honourable Mr.Justice V.G.Arun

Appeal No. : OP(C)/1083/2020

Appellant : P.Sreekumar,

Respondent : Kamaludeen

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE V.G.ARUN THURSDAY, THE 30TH DAY OF SEPTEMBER 2021 / 8TH ASWINA, 1943 AGAINST THE ORDER/JUDGMENT IN AS 106/2015 OF DISTRICT COURT & SESSIONS COURT,KOLLAM, KOLLAM PETITIONER/4th RESPONDENT: P.SREEKUMAR, AGED 57 YEARS S/O. RAGHUNATHA PILLAI, SAMOOHAM MADOM, 11/307-A, FERRY ROAD, SOUTH CHITTOOR, KOCHI 682 027. BY ADV S.SUDHISH KUMAR RESPONDENTS/APPELLANTS/RESPONDENTS 1,2,3 AND 5 TO 10: 1 KAMALUDEEN AGED 70 YEARS S/O. VEERA SAHIB KALLUVILA PUTHEN VEETIL, PERAYAM CHERRY, THAZHUTHALA VILLAGE, KOLLAM DISTRICT, 691 571. 2 RAMLA, AGED 55 YEARS

D/O. ABDHUL KHADER, THATTARUVILA VEETIL, NADUVILAKKARA
CHERRI, MAYYANAD VILLAGE, KOLLAM DISTRICT 691 303. 3
HARIKUMAR, AGED 61 YEARS S/O. RAGHUNATHA PILLAI, KESAVA
VILASAM, GLASS FACTORY, ROAD, KALAMASSERY, ERNAKULAM
683 104. M.R. ENTERPRISES, NEAR SUB REGISTRY OFFICE,
EDAPPALLY, KOCHI 682 026. -2- 4 MAHESH, AGED 50 YEARS S/O.
RAGHUNNATHA PILLAI, KESAVA VILASAM, GLASS FACTORY,
ROAD, KALAMASSERY, ERNAKULAM 683 104. WORKING AT FIRE
AND RESCUE STATION, THRIKKAKARA, KOCHI 682 021. 5
PADMAVATHY AMMA, AGED 81 YEARS W/O. RAGHUNNATHA
PILLAI, KESAVA VILASAM, GLASS FACTORY, ROAD,
KALAMASSERY, ERNAKULAM 683 104. 6 GANESHKUMAR.M.R.,
AGED 54 YEARS S/O. RAGHUNNATHA PILLAI, JUNIOR ENGINEER,
BCED, CPED, CPWD KENDREEYA SADAN, KORAMANGALA,
BANGALORE 34. NOW RESIDING AT KESAVA VILASAM, GLASS
FACTORY ROAD, RAJAGIRI POST, KALAMASSERY 683 104. 7
NAGESH .M.R., AGED 51 YEARS S/O. RAGHUNNATHA PILLAI,
KESAVA VILASAM, GLASS FACTORY ROAD, RAJAGIRI POST,
KALAMASSERY 683 104. 8 ABDHUL RAHIM, AGED 55 YEARS S/O.
SULAIMAN KUNJU, RAHIMA (RASI), MANZIL, VADAKKUMKARA
KIZHAKKE CHERIYIL, MUKHATHA VILLAGE, KOLLAM (DISTRICT)
691 571. 9 LAILA BEEVI, AGED 49 YEARS D/O. SULAIMAN KUNJU,
RASI MANZIL, VADAKKUMKARA KIZHAKKE CHERIYIL, MUKHATHA
VILLAGE, KOLLAM DISTRICT 691 571. -3- 10 SUNIL KUMAR, AGED
42 YEARS S/O. GOPALAN, GOPALA MANDIRAM PERAYAM CHERI,
THAZHUTHALA VILLAGE, KOLLAM 691 571. 11 JOHNSON
VARGHESE, AGED 59 YEARS S/O. VARGHESE, PLAMOOTTIL,
KIZHAKKATHIL, PATTATHANAM P.O. PATTATHANAM CHERRY,
VADAKKEVILA VILLAGE, KOLLAM DISTRICT 691 021. 12 MOLLY
ANTONY, AGED 55 YEARS W/O. JOHNSON VARGHESE,
PLAMOOTTIL, KIZHAKKATHIL, PATTATHANAM P.O. PATTATHANAM
CHERRY, VADAKKEVILA VILLAGE, KOLLAM DISTRICT 691 021.

BY ADVS. R1, R2 SRI.A.JANI(KOLLAM) SRI.K.C.CHARLES
SRI.M.POLY MATHAI SRI.VIMAL K.CHARLES THIS OP (CIVIL)
HAVING COME UP FOR ADMISSION ON 30.09.2021, THE COURT ON
THE SAME DAY DELIVERED THE FOLLOWING: -4-

JUDGMENT

The petitioner is the second defendant in O.S.No.80/2001 on the files of the Sub Court, Kollam. The suit was filed for partition of the ancestral property of the members of a Thavazhy. By Ext.P3 preliminary decree, the plaint schedule properties were partitioned into seven equal shares, allotting 2/7 share to the plaintiff and Ext.P5 supplementary preliminary decree was also passed. Aggrieved by the original preliminary decree respondent Nos. 6 to 9 filed A.S.No.50/2010 and as against the supplementary decree, A.S.No.106 of 2015. The appeals were taken up together and based on Ext.P5 compromise petition, the appellate court rendered Ext.P6 judgment and Exts.P7 and P8 decrees.

2. This original petition is filed on the

-5- ground that the compromise was entered into fraudulently, without giving notice to the petitioner, who was the second defendant in the suit. Further, the petitioner is not a signatory to the compromise petition. Hence, Ext.P6 judgment and Exts. P7 and P8 decrees, are liable to be set aside. Learned counsel for the petitioner contended that the appeal will have to be decided afresh, without reference to the compromise petition.

3. Learned counsel for the respondents do not dispute the contention that the petitioner is not a signatory to the compromise petition.

4. In such circumstances, I find substantive

force in the contention that Exts.P6 to P8 are liable to be set aside. In the result, the original petition is allowed. Exts. P6 to P8 are set aside and the appellate court is directed to pass orders on the appeals afresh, after affording an opportunity of hearing to all the parties and without reference to -6- Ext.P5 compromise petition. Being appeals of the year 2010 and 2015, effort shall be taken by the appellate

court to dispose of the appeals at the earliest, and if possible, within an outer limit of three months from the date of receipt of a copy of this judgment. Sd/- V.G.ARUN JUDGE hmh -7- APPENDIX OF OP(C) 1083/2020 PETITIONER EXHIBITS EXHIBIT P1 A TRUE COPY OF THE PLAINT IN O.S. NO. KOLLAM. EXHIBIT P2 A TRUE COPY OF THE JUDGMENT IN O.S. NO. LEARNED SUB COURT KOLLAM. EXHIBIT P3 A TRUE COPY OF THE PRELIMINARY DECREE IN O.S. NO.80/2001 DATED 06.06.2009 PASSED BY THE LEARNED SUB COURT, KOLLAM. EXHIBIT P4 A TRUE COPY OF THE ORDER PASSED IN I.A.

NO. 998/2009 IN O.S. NO. 80/2001 DATED 27.07.2010 ON THE FILES OF THE LEARNED SUB COURT, KOLLAM PASSING SUPPLEMENTARY DECREE. EXHIBIT P5 A TRUE COPY OF THE I.A. NO. 416//2019 FILED IN A.S. NO. 50/2010 AND 106/2015 BEFORE THE DISTRICT COURT, KOLLAM.

EXHIBIT P6 A TRUE COPY OF THE COMMON JUDGMENT

PASSED BY THE LEARNED DISTRICT COURT, KOLLAM IN A.S. NO. 50/2010 AND A.S. NO. EXHIBIT P7 A TRUE COPY OF THE PRELIMINARY DECREE PASSED BY THE LEARNED DISTRICT COURT, KOLLAM IN A.S. NO. 50/2010 DATED 27.05.2009. EXHIBIT P8 A TRUE COPY OF THE PRELIMINARY DECREE PASSED BY THE LEARNED DISTRICT COURT, KOLLAM IN A.S. NO. 106/2015 DATED 27.05.2019. RESPONDENT EXHIBITS NIL

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