

Subina vs M. Vasantha

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Court : Kerala

Decided On : Oct-01-2021

Judge : Honourable Mr. Justice P.Somarajan

Appeal No. : RFA/17/2019

Appellant : Subina

Respondent : M. Vasantha

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.SOMARAJAN
FRIDAY, THE 1ST DAY OF OCTOBER 2021 / 9TH ASWINA, 1943 RFA
NO. 17 OF 2019 AGAINST THE ORDER FDIA NO.1107/2017 IN OS
110/2015 OF I-ADDITIONAL SUB COURT, KOZHIKODE, KOZHIKODE
APPELLANTS/RESPONDENTS IN FDIA/DEFENDANTS IN SUIT: 1
SUBINA AGED 39 YEARS KARAPARAMBU P.O, VENGARI AMSOM
DESOM, KOZHIKODE TALUK. 2 SUJINA AGED 36 YEARS D/O. LATE
SASIDHARAN NAIR, KARAPARAMBU PO, VENGARI AMSOM
DESOM, KOZHIKODE TALUK. KOZHIKODE 673010. 3 SUMITHA,
AGED 28 YEARS RESIDING AT ALENCHERY VEEDU,
KARAPARAMBU PO, VENGARI AMSOM DESOM, KOZHIKODE

TALUK. BY ADVS. V.V.SURENDRAN SRI.P.A.HARISH
RESPONDENT/PETITIONER IN FDIA/PLAINTIFF IN SUIT: M.
VASANTHA AGED 61 YEARS W/O. LATE SASIDHARAN NAIR,
RESIDING AT MUTHUVEETILHOUSE, MUNDUPARAMB P.O,
MALAPPURAM AMSOM KEELAMURI DESOM, ERNAD TALUK
MALAPPURAM DISTRICT 676509. BY ADV SRI.S.RENJITH THIS
REGULAR FIRST APPEAL HAVING COME UP FOR ADMISSION ON
01.10.2021, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

P.SOMARAJAN, J.

----- R.F.A. No.17 of 2019
----- Dated this the 01st day of October, 2021

JUDGMENT

When there is a decree by partition by metes and bounds into four equal shares, it is neither permissible nor advisable to pass a final decree by clubbing together three shares out of four and to divide the property into two. This was actually done in the final decree by the court below and there by means of access to one of the shares out of the property clubbed together was denied. It is just against the preliminary decree and the mandate thereunder.

2. While making division into four equal shares,

means of access should be provided and it is not permissible to club together three shares out of four and to provide means of access to the property clubbed together, without drawing separate means of access to each share. The trial court has committed a very serious mistake. Hence, it requires fresh consideration by issuing a commission. The

order of the trial court is hence set aside. The matter is

remanded back to the trial court for fresh disposal. The parties shall appear before the trial court on 20/10/2021 for that purpose. The appeal is allowed in part accordingly. Sd/- P.SOMARAJAN JUDGE VPK

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