

Neghul Thomson, vs George ,

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Court : Kerala

Decided On : Jan-31-2020

Judge : Honourable Mr. Justice P.Somarajan

Appeal No. : RSA/979/2007

Appellant : Neghul Thomson,

Respondent : George ,

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.SOMARAJAN
FRIDAY, THE 31ST DAY OF JANUARY 2020 / 11TH MAGHA, 1941
RSA.No.979 OF 2007(G) AGAINST THE DECREE & JUDGMENT
DATED 08-12-2006 IN AS 43/2001 OF SUB COURT, PALA AGAINST
THE DECREE & JUDGMENT DATED 27-02-2001 IN OS 122/1995 OF
MUNSIFF COURT, PALA APPELLANTS/APPELLANT AND 4TH
RESPONDENT/DEFENDANTS 4 & 6: 1 NEGHUL THOMSON,
S/O.THOMAS,CHAYANAKUNNEL HOUSE, KURICHITHANAM
VILLAGE, PALA, KOTTAYAM DISTRICT. REPRESENTED BY POWER
OF ATTORNEY HOLDER, MONAMMA, AGED 36, W/O.JOBOUY,
C.C.NO.33/3402 A, THAIKAV,VENNALA P.O., KOCHI-682028. 2

JOBOUY THOMAS, S/O.THOMAS, CHAYANAKUNNEL HOUSE, KURICHITHANAM VILLAGE,, PALA, KOTTAYAM DISTRICT.(PERMANENT ADDRESS) BY ADVS. SRI.B.RAMACHANDRAN SMT.P.N.INDU SMT.JOLIMA GEORGE RESPONDENTS/RESPONDENTS 1 TO 3 AND 5/PLAINTIFF AND DEFENDANTS 2,3 AND 5: 1 GEORGE, S/O.JOSEPH, CHAYANAKUNNEL HOUSE, KURICHITHANAM VILLAGE, PALA, KOTTAYAM DISTRICT. 2 ANNAMMA, (DELETED), W/O.THOMAS, CHAYANAKUNNEL HOUSE, KURICHITHANAM VILLAGE, PALA, KOTTAYAM DISTRICT. 3 GENEV THOMSON, (DELETED), S/O.THOMAS CHAYANAKUNNEL HOUSE, KURICHITHANAM VILLAGE, PALA, KOTTAYAM DISTRICT. RSA.No.979 OF 2007(G) 2 4 SHIRLY ROY KODUVATHU, (DELETED), D/O.THOMAS CHAYANAKUNNEL HOUSE, KURICHITHANAM VILLAGE, PALA, KOTTAYAM DISTRICT. (IN VIEW OF THE SUBMISSION OF THE COUNSEL FOR APPELLANT THAT RESPONDENT 2 TO 4 ARE THE CO- DEFENDANTS IN THE SUIT ALONG WITH THE APPELLANTS THE NAME OF RESPONDENTS 2 TO 4 ARE DELETED FROM THE PARTY ARRAY AS PER ORDER DATED 08.06.2009 IN RSA.) THIS REGULAR SECOND APPEAL HAVING BEEN FINALLY HEARD ON 31.01.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: RSA.No.979 OF 2007(G) 3

JUDGMENT

The 4th and 6th defendant came up with this appeal against the decree and judgment of both the courts below. The dispute is pertaining to item No.5 property, a way constructed by the defendants

for their use.

The property of the plaintiffs lies on t

registered holding under an earlier partition of the year 1969, wherein a way was set apart having a width of 2.14 metres as means of access to the

properties.

But it was not established due to the existen

item No.5 in the plaint schedule. The attempt of plaintiff to use the same was objected by the defendants and put up a gate so as to restrain the RSA.No.979 OF 2007(G) 4 entry of the plaintiff to the said way which has resulted in the institution of the present suit.

2. The parties are brothers. Admittedly, both

of them obtained the property under a parental document, a partition of the year 1969. Prior to that the properties were lying as a single compact plot. The way provided in the partition deed could not be established due to the existence of an intervening property. Alternative way provided by

the defendants, the item No.5, hence should be understood as a substitute for the way provided in the partition deed. The fact that the property of the plaintiff lies on its side would itself show a right of entry into the way being part of large extent of property partitioned in the year 1969. The concurrent finding rendered by both the courts below on the factual matrix cannot be interfered

with, unless there is warranting reason. No RSA.No.979 OF 2007(G) 5 warranting reason was brought to the notice of this court. The appeal fails, dismissed. No costs. Sd/- P.SOMARAJAN, JUDGE pm // TRUE COPY // PA TO JUDGE

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