

Sreedharan vs Santha

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Court : Kerala

Decided On : Oct-30-2019

Judge : Honourable Mr. Justice B.Sudheendra Kumar

Appeal No. : OP(C)/3095/2017

Appellant : Sreedharan

Respondent : Santha

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR WEDNESDAY, THE 30TH DAY OF OCTOBER 2019 / 8TH KARTHIKA, 1941 AGAINST THE ORDER/JUDGMENT IN OS 133/2014 OF MUNSIFF MAGISTRATE COURT,MANANTHAVADY PETITIONER/S: SREEDHARAN AGED 45 YEARS, S/O.LATE AKKANNAN, RESIDING AT VIYOORKUNNU COLONY, P.O.THARUVANA, MANANTHAVADY TALUK, WAYANAD DISTRICT. BY ADVS. SRI.M.SASINDRAN SRI.SATHEESHAN ALAKKADAN RESPONDENT/S/PLAINTIFF:

1 SANTHA AGED 53 YEARS, D/O.LATE AKKANNAN, KARINJAKUNNU LAKSHAMVEEDU COLONY, KARINJAKUNNU, POST KOTTATHARA-673121, VYTHIRI TALUK, WAYANAD DISTRICT. 2 SUSEELA AGED 48 YEARS, D/O.LATE AKKANNAN, RESIDING AT PADINJARATHARA PERAL, PALKUNI VEEDU, POST MANJOORA-673575, VYTHIRI TALUK, WAYANAD DISTRICT. 3 KUNJIRAMAN AGED 73 YEARS, S/O.LATE AKKANNAN, RESIDING AT VIYOORKUNNU COLONY, POST THARUVANA-670732, MANANTHAVADY TALUK, WAYANAD DISTRICT. 4 OMANA AGED 43 YEARS, D/O.LATE THANKAMMA, POOLANJOLAKUNNU, POST MANJOORA-673575, PERAL, VYTHIRI TALUK, WAYANAD DISTRICT. 5 PADMINI AGED 53 YEARS, D/O.LATE THANKAMMA, NELLIYERIKUNNU, POST PEECHANKODE-673121, MANANTHAVADY

TALUK, WAYANAD DISTRT. 6 RAJAN AGED 48 YEARS, S/O.LATE THANKAMMA, CHERALODUKUNNU, POST PADINJARATHARA-673575, VYTHIRI TALUK, WAYANAD DISTRICT. 7 JANU AGED 51 YEARS, D/O.LATE THANKAMMA, VIYOORKUNNU COLONY, POST THARUVANA-670732, 8 PUSHPA AGED 37 YEARS, D/O.LATE THANKAMMA, VIYOORKUNNU COLONY, POST THARUVANA-670732, 9 PRADEEP AGED 37 YEARS, S/O.LATE PADMINI, 10 BINDU AGED 35 YEARS, D/O.LATE PADMINI, 11 LATHIKA AGED 33 YEARS, D/O.LATE PADMINI, 12 AMBILI AGED 35 YEARS, D/O.LATE PADMINI, R1-12 BY ADV. SRI.P.S.APPU R1-12 BY ADV. SRI.T.C.SURESH MENON THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON

30.10.2019, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

In this original petition, the petitioner prayed for setting aside Ext.P3 order.

2. Heard.

3. The petitioner is the first defendant in the

suit. The Counsel for the petitioner raised a question regarding the payment of court fee. It was submitted before the court below by the learned Counsel for the petitioner that the court fee paid by the plaintiff under Section 37(2) of the Kerala Court Fees and Suits Valuation Act (for short the Act) was not sufficient as the petitioner was excluded from possession of the property. It was further contended that the petitioner was bound to pay the court fee as provided under

Section 37(1) of the Act. The court below as per Ext.P3

order found that the plaintiff was not excluded from

the possession of the property.

4. It appears from Ext.P1 plaint that there is no

averment in the plaint to the effect that the plaintiff was excluded from the possession of the property. It is true that there is averment to the effect that the defendants were taking usufructs from the properties. The court below correctly found that the possession and enjoyment of the property by some of the co-owners alone would not be sufficient to constitute exclusion from the possession of the remaining

co-owners. The court below further correctly observed that for the purpose of court fee, the

averments in the plaint alone are to be looked into. It appears from Ext.P1 plaint that there is averment therein that the property is in the joint possession of the plaintiff and others. The court below found that the plaintiff accepted the defendants as co-owners. In view of the above, the court below found that there was no exclusion of the plaintiff from possession as contemplated under Section 37(1) of the Act. Therefore, the court below found that the court fee paid under Section 37(2)(i) is proper. Having gone through Ext.P3 order, I do not find anything to hold that Ext.P3 order passed by the court below suffers from any illegality or incorrectness, warranting interference by this Court.

In the result, this Original Petition stands dismissed. Sd/- B.SUDHEENDRA KUMAR RK/31.10.2019 JUDGE APPENDIX PETITIONER'S/S EXHIBITS: EXHIBIT P1- A TRUE COPY OF THE PLAINT IN O.S.NO.133 OF 2014 ON THE FILE OF MUNSIFFS COURT MANANTHAVADY. EXHIBIT P2- A TRUE COPY OF THE WRITTEN STATEMENT FILED IN O.S.NO.133 OF 2014 ON THE FILE OF MUNSIFF'S COURT MANANANTHAVADY. EXHIBIT P3- A TRUE COPY OF THE ORDER DATED FILE OF COURT OF MUNSIFFS - MAGISTRATE MANANTHAVADY. RESPONDENT'S/S EXHIBITS:NIL //TRUE COPY// PA TO JUDGE RK

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