

K.M.Mohandas Vs. Ramnarayanan

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SooperKanoon Citation : sooperkanoon.com/3606

Court : Kerala

Decided On : Nov-19-2014

Judge : Honourable Mr.Justice P.Bhavadasan

Appellant : K.M.Mohandas

Respondent : Ramnarayanan

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE P.BHAVADASAN WEDNESDAY, THE 19TH DAY OF NOVEMBER 2014 28TH KARTHIKA, 1936 OP(C).No.2220 of 2014 (O) ----- I.A NO.6787/2014 IN OS NO.134/2005 of MUNSIF COURT, CHAVAKKAD. PETITIONERS (PETITIONERS)/DEFENDANTS:

----- 1.
K.M.MOHANDAS, AGED 63 YEARS, S/O.KALIKANDAN MAMMU, RESIDING AT 'SREENIDHI', AYYANTHOLE VILLAGE AND P.O. 680 003, THRISSUR TALUK AND DISTRICT.

2. JAYASREE MOHANDAS, AGED 56 YEARS, W/O.MOHANDAS, RESIDING AT 'SREENIDHI', AYYANTHOLE VILLAGE AND P.O. 680 003, THRISSUR TALUK AND DISTRICT.

3. KRISHNA INN, REPRESENTED BY MANAGING DIRECTOR, MOHANDAS, KIZHAKKE NADA, GURUVAYUR, THRISSUR DISTRICT. BY

ADVS.SRI.N.SUBRAMANIAM SRI.M.S.NARAYANAN SRI.P.T.GIRIJAN
SMT.USHA NARAYANAN RESPONDENTS: ----- 1.
RAMNARAYANAN,AGED ABOUT75YEARS, S/O.PARAMESWARA
AYYAR,'HARE KRISHNAN', GURUVAYOOR VILLAGE AND DESOM P.O - 680
101, CHAVAKKAD TALUK,THRISSUR DISTRICT.

2. KAMALAKSHY RAMANARAYANAN,AGED72YEARS, W/O.PARAMESWARA
AYYAR,'HARE KRISHNAN', GURUVAYOOR VILLAGE AND DESOM P.O - 680
101, CHAVAKKAD TALUK,THRISSUR DISTRICT. R1 & R2 BY
ADV.SRI.K.G.BALASUBRAMANIAN THIS OP (CIVIL) HAVING BEEN FINALLY
HEARD ON1911-2014, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING: pk OP(C).No.2220 of 2014 (O) -----
APPENDIX PETITIONERS EXHIBITS: ----- EXHIBIT-P1-
TRUE COPY OF THE COMMISSION REPOT AND SURVEY PLAN. EXHIBIT-P2-
TRUE COPY OF THE OBJECTION TO THE COMMISSION REPORT. EXHIBIT-
P3-TRUE COPY OF THE PETITION NO.I.A67872014. EXHIBIT-P4-TRUE COPY
OF THE PETITION TO ADVANCE HEARING OF I.A67872014. EXHIBIT-P5-
TRUE COPY OF THE

ORDER

PASSED BY THE MUNSIFF COURT, CHAVAKKAD IN I.A67872014 IN
O.S1342005. RESPONDENTS EXHIBITS: NIL //TRUE COPY// P.S.TOJUDGE pk
P. BHAVADASAN, J.

----- O.P.(C). No. 2220 of 2014 -----

--- Dated this the 19th day of November, 2014.

JUDGMENT

The petitioners, who are the defendants in O.S.134 of 2005 before the Munsiff's
Court, Chavakkad have come up with this Original Petition assailing Ext.P5 order
whereby the court below refused to set aside the commission report.

2. The suit O.S.134 of 2005 was one for recovery of possession on the strength of
title and for mandatory injunction and prohibitory injunction. A commissioner was
deputed and he prepared plans and reports and submitted as Exts. C1 to C4.

Properties were measured with the help of Taluk Surveyor and plan was drawn up and submitted before the court below. It is not in dispute that the defendants have filed their objection to the commission report.

3. The suit was listed for trial and P.W.1 was examined. Thereafter the defendants filed I.A.6787 of 2014 O.P.(C).2220/2014. 2 to have the commission report set aside and a fresh commission issued for obtaining a plan and report. The court below, by the impugned order, dismissed the petition holding that it is highly belated and there is no bonafides in the petition.

4. Adv. N. Subramaniam, learned counsel appearing for the petitioners relying on the decisions reported in Retnamma v. Mehaboob (2013(2) KHC670, Rattani v. Dharam Chand (1999 AIHC3581 and Minita Daphne Nitto v. Margret Benedict Rodrigues (2011(4) K.L.T. 99) contended that once objection is filed to the commission report, it is the obligation of the court to consider the objection and pass orders thereon. This mandatory duty on the court has not been followed in the case on hand and therefore the impugned order is unsustainable.

5. Adv. K.G. Balasubramanian, counsel appearing for the respondents on the other hand contended that if the O.P.(C).2220/2014. 3 petitioners were serious about their objection, they should have pressed for a hearing on the same before the trial started. It is significant, according to the learned counsel, that the suit was listed on consent of both the parties. Further it is pointed out that commission report is only an item of evidence and the petitioners have the freedom to examine the commissioner and establish their objection and show that the commission report is not acceptable. That facility is always open and available to the petitioners. The present attempt to get the commission report set aside by filing an independent application after the trial has commenced cannot be countenanced.

6. After having heard learned counsel on both sides and after perusing the decisions relied on by the learned counsel for the petitioners, it is felt that there is considerable force in the submission made by the learned counsel for the respondents. It is true that in the decision cited by the learned O.P.(C).2220/2014. 4 counsel for the petitioners, it is stated that the objection filed by the petitioners will have to be considered on its merits and orders passed thereon.

7. Going by the provisions of the Code of Civil Procedure the commission report forms part of the records and it is only an item of evidence. Certainly the parties are entitled to file their objections to the commission report and agitate their case. In all those decisions, objections were filed immediately after the commission reports were filed and that was sought to be established. In the case on hand, it was only after P.W.1 has been examined that an application was filed to have the commission report set aside. It is true that they had filed their objection before. But nothing prevented the petitioners from calling upon the court to consider their objection on earlier occasion if they were so serious about the same. O.P.(C).2220/2014. 5 8. Whatever that be, even now the petitioners are not precluded from establishing that the commission report is not acceptable or is not correct or cannot be accepted for various reasons which they have to prove at the time of evidence. Merely because the court below has tentatively held that there is no reason to reject the commission report, that cannot override the right of the petitioners to establish that the commission report is not acceptable based on other items of evidence to be adduced in the case. They have the right to examine the commissioner also to show that the commission report cannot be accepted. This right available to the petitioners is not shut out by the present order. Reserving the liberty of the petitioners to show that the commission report is not acceptable for reasons to be shown by adducing evidence at the time of trial, this Original Petition is dismissed. Being a suit of the year 2005, the trial court may make every endeavour to dispose of the suit as O.P.(C).2220/2014. 6 expeditiously as possible, at any rate, within six months from the date of receipt of a copy of this judgment. P. BHAVADASAN, JUDGE sb.