

Rachel John Vs. K.Sudhakaran

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Court : Kerala

Decided On : Jun-10-2015

Judge : Honourable Mr.Justice K.T.Sankaran

Appellant : Rachel John

Respondent : K.Sudhakaran

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE K.T.SANKARAN WEDNESDAY, THE 10TH DAY OF JUNE 2015 20TH JYAISHTA, 1937 CRP.No. 777 of 2013 ----- (IA8642013 in OS17662013 of 1st Addl. Munsiff's Court, Thiruvananthapuram) PETITIONERS/RESPONDENTS/PLAINTIFFS:

----- 1. RACHEL JOHN, W/O. LATE JOHN P.CHACKO, PJRRA E/17 JUPITER, POTHUJANAM ROAD, KUMARAPURAM, CHERUVACKAL VILLAGE THIRUVANANTHAPURAM.

2. JACOB JOHN S/O. T.C.CHACKO, RESIDING AT PJRRA E/16 IN JACKAL POTHUJANAM ROAD, KUMARAPURAM, CHERUVACKAL VILLAGE THIRUVANANTHAPURAM. BY ADVS.SRI.RINNY STEPHEN CHAMAPARAMPIL SMT.ASHA ELIZABETH MATHEW

RESPONDENTS/PETITIONERS/DEFENDANTS:

----- 1. K.SUDHAKARAN S/O. KUNJURAMAN, K-20 KATTIL LANE, KUMARAPURAM

THIRUVANANTHAPURAM, NOW RESIDING AT A-147 ADARSH NAGAR, PATTOM P.O., THIRUVANANTHAPURAM 69500.

2. T.JAYAPRABHA D/O. THANKAMMA, K-20 KATTIL LANE, KUMARAPURAM THIRUVANANTHAPURAM NOW RESIDING ST A-147 ADARASH NAGAR, PATTOM P.O., THIRUVANANTHAPURAM 69500. R1 & 2 BY ADV. SRI.D.SAJEEV THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 1006- 2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: C.R.P.777/2013 APPENDIX PETITIONER'S EXHIBITS: ANNEX.A1 : TRUE COPY OF I.A.864/2010 IN O.S.1766/2003 ANNEX.A2 : TRUE COPY OF THE OBJECTION FILED BY THE PETITIONERS TO IA864/2010 ANNEX.A3 : TRUE COPY OF THE APPLICATION DATED 67/2010 SUBMITTED BY THE 1ST PETITIONER UNDER THE RIGHT TO INFORMATION ACT. ANNEX.A4 : TRUE COPY OF THE LETTER DT.4.8.2010 ISSUED BY THE INFORMATION OFFICER OF KSEB ELECTRICAL SECTION, ULLOOR. ANNEX.A5 : TRUE COPY OF THE APPLICATION DATED 166.2011 SUBMITTED BY THE 1ST PETITIONER UNDER THE RIGHT TO INFORMATION ACT. ANNEX.A6 : TRUE COPY OF THE REPLY DATED 147.2011 ISSUED BY THE INFORMATION OFFICER, KSEB, ULLOOR SECTION. ANNEX.A7 : A TRUE COPY OF THE HEARING NOTE FILED BY THE PETITIONERS' COUNSEL BEFORE THE COURT BELOW IN IA.863/2010 AND IN IA.864/2010. RESPONDENTS' EXHIBITS : NIL // TRUE COPY // PA TO JUDGE K.T.SANKARAN, J.

----- C.R.P. No.777 of 2013 D -----
----- Dated this the 10th June 2015 -----

ORDER

The revision petitioners filed O.S.No.1766/2003 on the file of the 1st Additional Munsiff's Court, Thiruvananthapuram against the respondents for a permanent prohibitory injunction restraining the defendants from trespassing upon the plaint schedule property, from cutting open a pathway through that property and from demolishing the compound wall. The defendants did not appear in the suit. The suit was decreed ex-parte on 6.4.2014.

2. Alleging that the decree was violated and the boundary wall was partially demolished, the revision petitioners/decreed C.R.P.777/2013 2 holders filed Execution petition praying to restore the compound wall. After the Execution petition was filed, the respondents (defendants/judgment debtors) filed O.S. No.139 of 2010 on the file of the Munsiff's Court, Thiruvananthapuram against the revision petitioners/decreed holders in respect of the very same property claiming a right of way. In that suit, the revision petitioners/decreed holders filed a written statement mentioning about the decree in O.S. No.1766 of 2003.

3. Stating that the respondents/defendants came to know of the decree in O.S.No.1766 of 2003 only when the written statement was filed in O.S.No.139 of 2010, the respondents filed I.A. No.864 of 2010 to set aside the ex parte decree and I.A. No.863 of 2010 to condone the delay of 2123 days in filing the application to set aside the ex-parte decree. C.R.P.777/2013 3 4. In I.A. Nos.863 of 2010 and 864 of 2010, PWs 1 and 2 and DWs 1 and 2 were examined and Exhibits A1 and 2, B1 to 8, D1 to 7 and X1 series were marked. The Amin was examined as CW1.

5. That such number of witnesses were examined and documents were marked was found from the index sent along with the records. The impugned order does not contain any index and on a perusal of the order, it is seen that the appendix is shown as 'nil'.

6. The court below, by the order dated 21.08.2013, allowed I.A. Nos.863 of 2010 and 864 of 2010. The order passed by the court below is extracted below: "Application for condonation of delay of 2123 days for filing restoration application. Reason stated is that he has not received summons. C.R.P.777/2013 4 On going through records it can be seen that an ex parte decree is passed. EP is also pending. The petitioner adduced evidence. The right of petitioner to contest the case cannot be shut out. But the inordinate delay is to be compensated. Hence both IA allowed on cost of `2000/-. Pay cost on or before 31.08.2013." 7. The order impugned is not a speaking order. The court below did not consider the contentions put forward by the parties in the application and counter. The court below also did not consider the documentary and oral evidence in the case. There is no finding that the defendants in the suit were prevented by sufficient cause

from appearing before court when the suit was called for hearing. There is also no finding that the delay in filing the application to set aside the exparte decree was properly explained by the defendants. The case of the defendants that they C.R.P.777/2013 5 did not receive summons was mentioned in the order, but there is no finding on that aspect. In short, the revisional court is not in a position to arrive at any conclusion as to whether the court below considered the relevant aspects and whether the decision arrived at is liable to be interfered with in revision under Section 115 of the Code of Civil Procedure. An order passed by the Subordinate Court is subject to appeal or revision. The whims and fancies of the Judicial Officer would not constitute a substitute for the reasoning and the finding based on that reasoning. The order passed by the court below is liable to be set aside on the short ground that it is not a speaking order. Accordingly, the C.R.P. is allowed and the order impugned is set aside. The court below shall consider I.A. No.863 of 2010 and I.A.No.864 of 2010 afresh and shall pass a reasoned order in accordance with law. C.R.P.777/2013 6 A copy of this order shall be forwarded by the Registry to the Director of the Kerala Judicial Academy for taking appropriate steps. sd K.T.SANKARAN, JUDGE // TRUE COPY // PA TO JUDGE dl

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