

Annie Stephen Vs. Mathew Joseph

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Court : Kerala

Decided On : Jul-29-2015

Judge : Honourable Mr. Justice a.Hariprasad

Appellant : Annie Stephen

Respondent : Mathew Joseph

Judgement :

IN THE HIGH COURT OF KERALAAT ERNAKULAM PRESENT: THE
HONOURABLE MR. JUSTICE A.HARIPRASAD WEDNESDAY, THE29H DAY OF
JULY20157TH SRAVANA, 1937 RP.No. 402 of 2014 () IN RSA.239/2013
----- AGAINST THE

JUDGMENT

IN RSA NO. 239/2013 of HIGH COURT OF KERALA DATED2506-2013 REVIEW
PETITIONER(S)/APPELLANTS/APPELLANTS/DEFENDANTS:

----- 1. ANNIE STEPHEN, AGED61YEARS
W/O.STEPHEN, MUPRAPPALLIL HOUSE, UZHAVOOR EAST PO UZHAVOOR
VILLAGE, MEENACHIL TALUK.

2. M.E.STEPHEN, AGED66YEARS S/O.ESTHAPPAN, MUPRAPPALLIL HOUSE,
UZHAVOOR EAST PO UZHAVOOR VILAGE, MEENACHIL TALUK.

3. M.STESON AGED38YEARS S/O.STEPHEN, MUPRAPPALLIL HOUSE,
UZHAVOOR EAST PO UZHAVOOR VILLAGE, MEENACHIL TALUK NOW

RESIDING AT NO.8 CROFTON ROAD, OLD SWAN LIVER POOL L.13, UNITED KINGDOM REP.BY HIS FATHER AND POWER OF ATTORNEY HOLDER THE SECOND APPELLANT M.E.STEPHEN OF MUPRAPPALLIL HOUSE UZHAVOOR EAST PO, UZHAVOOR VILLAGE, MEENACHIL TALUK. BY ADVS.SRI.P.SANTHALINGAM (SENIOR ADVOCATE) SRI.S.SHARAN SRI.P.G.JACOB RESPONDENT(S)/RESPONDENT/RESPONDENT/PLAINTIFF: ----- MATHEW JOSEPH S/O.UTHUPAN, RESIDING ATKAIPARETTU HOUSE UZHAVOOR EAST PO, UZHAVOOR VILAGE, MEENACHIL TALUK KOTTAYAM DISTRICT 686634. BY ADV. SRI.M.NARENDRA KUMAR THIS REVIEW PETITION HAVING BEEN FINALLY HEARD ON 24.07.2015, THE COURT ON 29.07.2015 PASSED THE FOLLOWING: A.HARIPRASAD, J.

----- Review Petition No.402 of 2014 in R.S.A. No.239 of 2013 ----- Dated this the 29th day of July, 2015

ORDER

Heard the learned counsel for the review petitioners and the contesting respondent.

2. Review petitioners are the defendants in a suit for declaration of easement right by grant for ingress and egress to the plaint schedule property. The plaintiff is the respondent in this review petition. The trial court as well as the first appellate court concurrently found that the rights set up by the plaintiff are legally sustainable and hence decreed the suit. That was challenged in R.S.A.No.239 of 2013 before this Court. Learned Single Judge vide judgment dated 25.06.2013 considered the entire matters at length and decided the points against the appellants/review petitioners. The second appeal was dismissed finding that there was no merit.

3. The review petitioners contend that there are errors apparent on the face of the record and the findings arrived at by this Court require to be reconsidered. Learned counsel for the review petitioners mainly contended that the theory of implied grant developed by the trial court is Review Petition No.402 of 2014 in R.S.A. No.239 of 2013 is legally wrong. The suit was decreed throughout without reference to the pleadings in the matter. The same was repeated by the lower

appellate court too.

4. Per contra, learned counsel for the plaintiff/respondent contended that the case of the review petitioners, if considered in toto, is insufficient for invoking the jurisdiction of this Court under Order XLVII Rule 1 of the Code of Civil Procedure (in short, "CPC"). Respondent placed reliance on a Division Bench decision of this Court in *Delta Foundations & Constructions v. Kerala State Construction Corporation Ltd.* (2003 (1) KLT626 to contend as follows: "Error apparent on the face of the record must be an error which must strike on mere looking at the record and would not require long drawn process of reasoning on points on which there may conceivably be two opinions. An error which is not self evident and has to be detected by a process of reasoning can hardly said to be an error apparent on the face of the record justifying the court to exercise its powers under O.XLXII R.1 of the Code of Civil Procedure. If there is a clear distinction between an erroneous decision and an error apparent on the face of the record the first can be corrected by the higher forum while the latter can Review Petition No.402 of 2014 in R.S.A. No.239 of 2013 3 only be corrected by exercise of the review jurisdiction." Another Division Bench of this Court in *Smt.Kamala Raphael v. Earnest & Ors.*(2011 (1) KLJ286 also took the same view and expressed the same as follows: "Under O.47 R.1 CPC a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review under O.47 R.1 CPC. In exercise of the jurisdiction under O.47 R.1 CPC it is not permissible for an erroneous decision to be "reheard and corrected". A review petition, it must be remembered has a limited purpose and cannot be allowed to be "an appeal in disguise". Therefore, it is evident that the error said to have been occurred in the judgment of this Court must be patent and it shall not be one detected on a long drawn process of reasoning.

5. Learned counsel for the review petitioners contended that the finding that there was an implied grant permitting the respondent to use the Review Petition No.402 of 2014 in R.S.A. No.239 of 2013 4 disputed pathway is bereft of pleading. On the basis of the decision of the Supreme Court in *Rajagopal (dead) By Lrs. v. Kishan*

Gopal and another ((2003) 10 SCC653, it is contended that in the absence of specific pleading in the plaint, no lis exists thereon and the courts are precluded from taking cognizance on mere evidence. This proposition is unchallengeable. But as contended by the learned counsel for the respondent, these facts have been marshalled and analysed by the two courts below and after referring to the pleadings and evidence, the courts below arrived at a finding that the plaintiff/respondent is entitled to claim a right of way through the disputed pathway by virtue of a grant. This factual finding was re-examined by this Court in extenso, though not relevant in a second appeal, and arrived at a finding that the respondent succeeded in proving an implied grant for claiming a right of access. Various authorities have been cited at Bar to impress upon the distinction between easement of necessity and right of easement claimed through grant. I am of the view that those decisions are not germane for considering the question since what is the scope of review is well settled and the review cannot be treated as an appeal in disguise.

6. In the grounds of review also, factual issues are raked up by the review petitioner attacking the reasoning of this Court based on Review Petition No.402 of 2014 in R.S.A. No.239 of 2013 5 evidence. Understanding the scope of review correctly as mentioned in the decisions quoted above, I am unable to agree with the submission of the learned counsel appearing for the review petitioners that this Court committed an error apparent on the face of the record warranting a review of the judgment. I find no merit in the review petition. In the result, the review petition is dismissed. A. HARIPRASAD, JUDGE. cks

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