

Joseph Netto Vs. Doris David

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SooperKanoon Citation : sooperkanoon.com/63448

Court : Kerala

Decided On : Aug-04-2015

Judge : Honourable Mr. Justice B.Kemal Pasha

Appellant : Joseph Netto

Respondent : Doris David

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE B.KEMAL PASHA TUESDAY, THE 4TH DAY OF AUGUST 2015 13TH SRAVANA, 1937 OP(C).No. 4082 of 2013 (O) ----- EP NO. 189/2011 IN OS NO. 125/2006 OF PRINCIPAL MUNSIF COURT, KOLLAM ----- PETITIONER : ----- JOSEPH NETTO, S/O.FRANCIS NETTO, OODATHIL HOUSE, CONVENT ROAD, THANKASSERY, KOLLAM. BY ADV. SRI.M.T.SURESHKUMAR RESPONDENT(S) : ----- 1. DORIS DAVID, D/O.FRANCIS NETTO, OODATHIL HOUSE, CONVENT ROAD, THANKASSERY, KOLLAM-691 007.

2. DOROTHY SAMUAL VAS, OODATHIL HOUSE, CONVENT ROAD, THANKASSERY KOLLAM-691007.

3. JOY FRANCIS, S/O.FRANCIS, OODATHIL HOUSE, CONVENT ROAD THANKASSERY,KOLLAM FROM THARAYIL VEEDU KANNIMEL CHERRY,

SAKTHIKULANGARA-691007.

4. MARY JANSY, W/O.JOY FRANCIS, OODATHIL HOUSE, CONVENT ROAD THANKASSERY,KOLLAM FROM THARAYIL VEEDU KANNIMEL CHERRY, SAKTHIKULANGARA-691 007. R1 BY ADV. SRI.K.S.MANU (PUNUKKONNOOR) R2 BY ADV. SRI.AJEESH K.SASI R4 BY ADV. SRI.B.SURESH KUMAR THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 04-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: Mn ...2/- OP(C).No. 4082 of 2013 (O) ----- APPENDIX PETITIONER(S)' EXHIBITS : ----- EXT. P1: COPY OF THE PLAINT IN O.S.NO.125 OF 2006 FILED BY THE PETITIONER BEFORE THE MUNSIF COURT, KOLLAM DATED 20.2.2006. EXT. P2: COPY OF THE

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IN O.S.NO.125 OF 2006 ON THE FILE OF THE PRINCIPAL MUNSIF, KOLLAM DATED 27.10.2009. EXT. P3: COPY OF THE COMPROMISE DATED 13.3.2010 SIGNED BY THE PETITIONER HEREIN, THE RESPONDENTS NO.1 AND 2 AND THE RESPECTIVE COUNSELS IN A.S.NO.13 OF 2010 OF THE DISTRICT COURT, KOLLAM. EXT. P4: COPY OF THE DECREE DATED 13.3.2010 PASSED BY THE LOK ADALATH IN THE MATTER REFERRED TO IT BY THE DISTRICT COURT, KOLLAM IN A.S.NO.13 OF 2010 EXT. P5: COPY OF THE

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DATED 20.3.2010 IN A.S.NO.13 OF 2010 OF THE II ADDITIONAL DISTRICT COURT, KOLLAM. EXT. P6: COPY OF E.P. NO.189 OF 2011 IN O.S.NO.125 OF 2006 FILED BY THE PETITIONER BEFORE THE PRINCIPAL MUNSIF COURT, KOLLAM DATED 16.6.2011. EXT. P7: COPY OF THE OBJECTION FILED BY THE RESPONDENTS 3 AND 4 TO E.P.NO. 189 OF 2011 IN O.S.NO.125 OF 2006 ON THE FILE OF THE PRINCIPAL MUNSIF COURT, KOLLAM DATED SEPTEMBER 2011 EXT. P8: COPY OF THE PLAINT DATED 4.10.2011 IN O.S.NO.700 OF 2011 ON THE FILE OF THE MUNSIF COURT, KOLLAM FILED BY THE RESPONDENTS 3 & 4. EXT. P9: COPY OF THE AFFIDAVIT AND STAY PETITION FILED AS E.A.NO.347 OF 2011 IN E.P.NO.189 OF 2011 IN O.S.NO.125 OF 2006 ON THE FILE OF THE MUNSIF COURT

DATED1010.2011. EXT. P10: COPY OF THE

ORDER

DATED1910.2011 IN E.A.NO.347 OF 2011 IN E.P.NO.189 OF 2011 IN O.S.NO.125 OF 2006 OF THE PRINCIPAL MAGISTRATE COURT, KOLLAM. EXT. P11: COPY OF THE

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DATED123.2012 IN OP(CIVIL) NO.3491 OF 2011 OF THE HON'BLE COURT. EXT. P12: COPY OF I.A.NO.36 OF 2010 IN A.S.NO.13 OF 2010 FILED ON143.2012 BEFORE THE DISTRICT COURT, KOLLAM. (Contd...) OP(C).No. 4082 of 2013 (O) EXT. P13: COPY OF THE

ORDER

DATED153.2012 IN I.A.NO.364 OF 2012 IN A.S.NO.13 OF 2010 OF THE II ADDITIONAL DISTRICT COURT, KOLLAM. EXT. P14: COPY OF THE

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DATED263.2012 IN O.P.(CIVIL)NO.1021 OF 2012 OF THIS HON'BLE COURT. EXT. P15: COPY OF THE APPLICATION DATED24.2012 FILED BY THE RESPONDENTS3AND4IN E.P.NO.189 OF 2011 IN O.S.NO.125 OF 2006 BEFORE THE PRINCIPAL MAGISTRATE COURT, KOLLAM. EXT. P16: COPY OF THE

ORDER

DATED227.2013 IN E.P.NO.189 OF 2011 IN O.S.NO.125 OF 2006 OF THE PRINCIPAL MAGISTRATE COURT, KOLLAM. RESPONDENT(S)' EXHIBITS : NIL ----- //TRUE COPY// P.A. TO JUDGE Mn B.KEMAL PASHA, J.

===== O.P.(C).No.4082 of 2013 =====
Dated this the 4th day of August, 2015

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Exhibit P2 judgment in O.S.No.125 of 2006 of the Munsiff's Court, Kollam was passed, whereby the plaintiff's right for easement over plaint `C' schedule property was declared. After the decree, an agreement for sale of `B' schedule property was entered into between respondents 1 and 2 on the one part and respondents 3 and 4 on the other part, by which, respondents 3 and 4 have agreed to purchase the property from respondents 1 and 2. It is the case of the respondents that in order to snatch away the said properties of respondents 1 and 2, who are none other than the sisters of the petitioner/plaintiff, the petitioner has filed an appeal as A.S.No.13 of 2010 challenging the judgment and decree in O.S.No.125 of 2006, even though the suit was decreed in his favour. The appeal was O.P.(C).No.4082 of 2013 2 preferred on 13.01.2010. Thereafter, a compromise was allegedly entered into between the parties on 13.03.2010 in the matter before the Lok Adalath and allegedly an award was passed by the Lok Adalath.

2. When the so called award was put in execution, the respondents challenged the validity of the award. The respondents have pointed out that there is no award at all within the meaning of Regulation 33(1) of the Kerala State Legal Services Authority Regulations, 1998. The court below has upheld the contention resorted to by the respondents through Exhibit P16 order. The court below has found that the so called award does not contain the signature of the judicial officer and therefore the award is not executable. The said order is under challenge.

3. Heard the learned counsel for the petitioner and the learned counsel for the respondents.

4. The learned counsel for the respondents has pointed out that Exhibit P4 award is not signed by either the judicial officer or the members of the Adalath. On a perusal O.P.(C).No.4082 of 2013 3 of Exhibit P4, it seems that it does not contain the signature of the judicial officer or any of the other two members. As per Regulation 33(1) of the Kerala State Legal Services Authority Regulations, 1998, every award of the Lok Adalath shall be signed by the parties to the dispute and the panel constituting the Lok Adalath. In this particular case, Exhibit P4 does not contain signatures of the panel constituting the Lok Adalath. Matters being so, it cannot be treated as an award for effecting compromise or settlement in a Lok

Adalath.

5. It seems that based on Exhibit P4, the IIInd Additional District Court, Kollam has passed the following judgment through Exhibit P5: "Appeal closed. Since it is settled in Adalath." The net result is that there is no award at all. The respondents have been disputing any compromise entered into with the petitioner in the matter. The nature of Exhibit P4 allegedly made also clearly reveal that there were severe manipulations in the matter. When there is no award, the O.P.(C).No.4082 of 2013 4 disposal of appeal A.S.No.13 of 2010 effected through Exhibit P5 could not survive. The resultant position is that the said appeal revives. Matters being so, Exhibit P5 judgment goes and A.S.No.13 of 2010 revives. If in any way aggrieved, the petitioner can proceed with the appeal. In such case, necessarily respondents 3 and 4 herein are also necessary parties to the appeal and either the appellant has to bring on record respondents 3 and 4 herein as parties to the appeal or in the alternative, respondents 3 and 4 have the right to come into the appeal under Order I Rule 10 (2) CPC. This Original Petition (Civil) is disposed of as above. Sd/-
B.KEMAL PASHA JUDGE DSV/6/8/15

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