

**Rani Vs. Cathreena**

**Rani Vs. Cathreena**

**SooperKanoon Citation :** [sooperkanoon.com/730806](http://sooperkanoon.com/730806)

**Court :** Kerala

**Decided On :** Oct-14-2003

**Reported in :** 2004(1)KLT563

**Judge :** S. Sankarasubban and; A.K. Basheer, JJ.

**Acts :** [Code of Civil Procedure \(CPC\) , 1908](#) - Order 6, Rule 7

**Appeal No. :** A.S. No. 257 of 1992

**Appellant :** Rani

**Respondent :** Cathreena

**Advocate for Def. :** N.P. Samuel,; A.P. Chandrasekharan and; Prabha R. Menon

**Advocate for Pet/Ap. :** N. Subramaniam and; M.S. Narayanan, Advs.

**Judgement :**

**S. Sankarasubban, J.**

1. This appeal is filed against the judgment and decree in O.S. No. 899 of 1986. Plaintiff filed the suit for partition of the plaint schedule property comprised in Sy. No. 481/1, 481/2 and 483 having a total extent of 74 cents. The land is situated in Kottappuram Village in Talappilly Taluk in Trichur District.

2. The plaintiff claimed 1/8 share in the property. According to the plaintiff, the plaintiff schedule property belonged to one Mathai, who was the father of the plaintiff and defendants 2 to 7 and the husband of the first defendant. After the death of Mathai, the plaintiff claimed the 1/8th share in the assets of Mathai.

3. The first defendant filed a written statement contending that the plaintiff is not entitled to get partition and the father-in-law of the first defendant Kuriath executed a will in respect of the property belonged to him. Kuriath died on 12.2.1959 and there has been a partition between the first defendant and other defendants by which portions of the property have been set apart to the other defendants and that the plaintiff has no right to get partition. They also narrated the partition in 1984 between the mother and the other defendants.

4. Seventh defendant has filed a written statement mentioning about the Will. The lower Court, as a matter of fact, found that there was no evidence to show that Mathai was the owner of the property. Both sides admitted that a decree for partition was given as prayed for. During the pendency of the suit, the first defendant filed I.A. No. 3022 of 1991 for amending the written statement. In the affidavit accompanying the amendment petition, it is stated as follows: So far as the property comprised in Sy. No. 482 is concerned, which is an extent of 24 cents, was given to the first defendant by the father-in-law, Kuriath. So far as the property of 14 cents in Sy. No. 481/1 and 36 cents in Sy. No. 483 is concerned, it was taken on lease from Angechi Ammal. Hence an application for amendment of the written statement was filed. The Court below dismissed the application on the ground that it was filed only for protracting the proceedings before the Court.

5. The appellants filed C.M.P. No. 3618 of 1992 to receive additional documents. The documents are purchase certificates regarding the property comprised in Sy. Nos. 483,481, etc. It is further stated that it was by an oversight that those documents could not be produced before the lower Court. The appellants have further brought to our notice that an application was filed to get letters of administration for the will executed by Kuriath regarding 24 cents of property mentioned in the case. The case was numbered as O.S. No. 6 of 1991 of the District Court, Trichur and by judgment the learned Judge upheld the genuineness

of the Will. The first defendant, who was the plaintiff in that case was entitled to have letters of administration with a copy of the Will annexed. Learned counsel for the appellants, submitted that the Court below was not correct in dismissing the amendment application. He further submitted that the additional documents now produced will give a long way to prove the case of the first defendant. Learned counsel for the respondents objected to this.

6. After hearing both sides, we are of the view that the lower Court was not correct in dismissing the amendment application. Further, at present, the first defendant has obtained a probate regarding the Will alleged to have been executed by the first defendant's father-in-law. The purchase certificates also show that the property was in the possession of the first defendant.

7. In the above view of the matter, we think, it is better to remand the case back to the trial Court. I.A. No. 3022 of 1991 is allowed. The appellants will be allowed to amend the written statement as per the amendment and additional issues may be raised by the Court below and additional documents will also be admitted in evidence. In that view of the matter, we set aside the judgment and decree of the Court below and the case is remanded to the trial Court for fresh disposal in accordance with law. The documents produced along with C.M.P. No. 3618 of 1992 will also be sent back.

Appeal is disposed of as above. Parties are directed to appear in the Court below on 13.11.2003.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**