

George Thomas. Vs. Aleyamma Thomas.

George Thomas. Vs. Aleyamma Thomas.

SooperKanoon Citation : sooperkanoon.com/917027

Court : Kerala

Decided On : Dec-22-2010

Judge : R.Basant; K.Surendra Mohan, Jj.

Appeal No. : Mat.Appeal.No. 1042 of 2010

Appellant : George Thomas.

Respondent : Aleyamma Thomas.

Advocate for Pet/Ap. : SRI.P.J.JOSEPH, Adv.

Judgement :

1. Appellant herein was the respondent in O.P.No.831 of 2007 before the Family Court, Thiruvalla. That petition was filed by the respondent herein, his wife, claiming paternal share and value of ornaments. That petition was dismissed for default. The claimant wife/respondent herein filed a petition for restoration. That petition came up for hearing on 06.02.2010. The record of the court shows that on that day, the parties settled all their outstanding disputes. The terms of settlement are enumerated as items 1 to 6 in the records (order sheet) of the court. Those terms are accepted by both sides. Parties and counsel have signed such statement. Accepting the compromise, the court proceeded to decree the O.P in terms of the compromise. We do take note of the inadequacy in the proceedings that the compromise was noted on the application for restoration. Long later in October, 2010, the petitioner filed I.A.No.2811 of 2010 to review the order dated 06.02.2010. According to the petitioner, he was actually present in Court on that

date. His counsel was also present. But according to him, he had not settled the disputes. He had not signed Annexure-A2. His lawyer had admittedly signed Annexure-A2, ie. terms of settlement 1 to 6. He is also shown to have signed Annexure-A2. But according to him, he had not signed Annexure-A2. It is, in this context that an application for review was filed.

2. The application was opposed. Counter statement was filed. The Family Court considered the matter and by the impugned detailed order came to the conclusion that there are no bona fides in the request of review. The petition was dismissed with cost of Rs.1,500/-.

3. The appellant claims to be aggrieved by the impugned order. What is his grievance? The learned counsel repeats that though the appellant was present before Court on 06.02.2010 along with his lawyer, he had not settled the disputes. Though his counsel had signed Annexure-A2 terms of agreement 1 to 6, he had not signed the same. On 06.02.2010, proceedings were closed. But till October, 2010, the appellant did not move his little finger against Annexure-A2 compromise.

4. Surprisingly the present stand taken is that his lawyer signed Annexure-A2 without his knowledge. In Annexure-A2, the appellant is shown to have signed and his Advocate is shown to have counter signed. If these allegations were true, that is a very serious allegation against the lawyer concerned. What did the appellant do against the lawyer? Admittedly no action whatsoever has been taken against the lawyer for allegedly subscribing to Annexure-A2. According to the appellant, his lawyer had signed the compromise statement declaring that he was countersigning such statement already signed by the appellant. In spite of that, the appellant did not take any action against the lawyer. Called upon to explain this bizarre and strange conduct of the appellant, the learned counsel for the appellant submits that a review petition has been filed and the counsel concerned had returned the brief to the appellant. That is what one can expect from any self respecting lawyer.

5. In any view of the matter, we are not persuaded to agree that there is any merit in the challenge raised against the impugned order. It appears to be clear as day light that the appellant had agreed to the 6 terms stipulated in Annexure-A2. He

had signed it. His counsel had countersigned it. He now wants to avoid the inconvenience of those stipulations and that is why the prayer for review has been made. There is no piece of conduct consistent with the innocence of the appellant, which could even remotely suggest that he had not consciously agreed to the 6 stipulations in Annexure-A2. A reading of the terms stipulated must also convey the fairness of the arrangement of settlement. It cannot also be lost sight of that the terms were recorded and the parties and counsel had signed on the order sheet maintained by the court in the immediate presence of the Presiding Officer.

6. We are of the opinion that admitting this Matrimonial Appeal would be gross injustice and dereliction of duty on the part of this Court. The appellant, it is very evident, is playing for time and is attempting to wriggle out of the inconvenience caused by the consent decree passed. His subsequent conduct knocks the bottom out of the theory that he had not signed Annexure-A2 and that his counsel had signed it without his authorisation/approval.

7. This Matrimonial Appeal is, in these circumstances, dismissed in limine.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com