
(2012) 10 KL CK 0048

High Court Of Kerala

Case No: RP. NO. 928 of 2012

Mildrit Fernandez

APPELLANT

Vs

Treesa Rocky and
Others

RESPONDENT

Date of Decision: Oct. 16, 2012

Hon'ble Judges: Thomas P. Joseph, J

Bench: Single Bench

Advocate: S. Vinod Bhat, for the Appellant; S. Sreekumar for R1, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Thomas P. Joseph, J.

This petition is filed by the 2nd appellant in R.S.A. No. 771 of 2003 for a review of certain directions made in the judgment dated 21.08.2012. Petitioner and the 1st appellant in R.S.A. No. 771 of 2003 are persons claiming under the late Joseph. The Second Appeal was directed against the judgment and decree of the learned Munsiff, Kochi in O.S. No. 179 of 1994 injunction alienation of the entire suit property (including the share of the late Joseph) as confirmed by the learned Sub Judge, Kochi in A.S. No. 121 of 2001.

2. Taking note of the fact that the late Joseph had half share in the suit property, this Court modified the judgment and decree in O.S. No. 179 of 1994 as confirmed in A.S. No. 121 of 2001 to the effect that the said suit will stand dismissed as regards the share of the late Joseph inherited/acquired by the appellants R.P. No. 928 of 2012 in (including the petitioner herein) and such of the respondents who are the legal heirs/legal representatives of the said late Joseph. It was also made clear that so far as the preliminary/final decree for partition in O.S. No. 18 of 1989 of the Sub Court, Kochi stand, the judgment and decree of this Court in R.S.A. No. 771 of 2003 will be subject to that preliminary/final decree. A further direction this Court made is that so far as the judgment in F.A.O. No. 88 of 2007 (filed by the 13th respondent in the Second Appeal) stands, the

benefit granted thereunder will go only to the 13th respondent.

3. According to the petitioner, she has filed F.A.O. No. 329 of 2009 in this Court against the order on I.A. No. 896 of 2004 (in O.S. No. 18 of 1989) from which the 13th respondent had filed F.A.O. No. 88 of 2007. According to the petitioner, if direction No. 3 in the judgment dated 21.08.2012 stands, it may appear that the petitioner, even if is successful in F.A.O. No. 329 of 2009 may not get the benefit of that judgment.

4. The learned counsel for the petitioner, in the circumstances requested that the judgment dated 21.08.2012 may be reviewed accordingly.

5. The learned Senior Advocate for the 1st respondent contended that the attempt of the legal heirs/legal representatives of the late Joseph under the guise of the application for review is to make in rods into the preliminary/final decree for partition passed by the learned Sub Judge in O.S. No. 18 of 1989 and to even request for a re-allotment of shares including the share allotted to the 1st respondent in the final decree.

6. There is no reason for such an apprehension raised by the learned Senior Advocate in so far as it is made specifically clear in the judgment dated 21.08.2012 that the judgment and decree in A.S. No. 121 of 2001 arising from the judgment and decree in O.S. No. 179 of 1994 are being modified only to the extent it concerned the share of the late Joseph and that so far as the preliminary/final decree for partition in O.S. No. 18 of 1989 of the Sub Court stands, the judgment and decree of this Court in the Second Appeal will be subject to the preliminary/final decree in O.S. No. 18 of 1989. That direction is clear that so far as the preliminary/final decree in O.S. No. 89 of 1989 stands, there would be no interference with the allotment of shares made to the 1st respondent in the Second Appeal as per the final decree therein. Therefore a further clarification in the matter is not required. Nor do I find merit in the apprehension of the 1st respondent in the light of direction in the judgment in S.A. No. 771 of 2003 which I have clarified further.

7. Now, to the grievance of the petitioner. That the petitioner (the 2nd appellant in the R.S.A.) has preferred F.A.O. No. 329 of 2009 and same is pending in this Court was not brought to the notice of this Court while disposing of the appeal by judgment dated 21.08.2012. Hence I could not make any direction regarding the petitioner in case F.A.O. No. 329 of 2009 happens to be allowed. Hence it is necessary to review direction No. 3 in the judgment and decree dated 21.08.2012 in R.S.A. No. 771 of 2003. In the above circumstances the petition for review is disposed of as under:

It is made clear that in case F.A.O. No. 329 of 2009 is disposed of in favour of the petitioner, she will also get the benefit granted thereunder (concerning the share of the late Joseph) as per the final decree in O.S. No. 89 of 1989 so far as that final decree stands and subject to the other directions in the judgment dated 21.08.2012 and clarification made above.