

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.T. SANKARAN
&
THE HONOURABLE MR. JUSTICE K. ABRAHAM MATHEW

MONDAY, THE 16TH DAY OF FEBRUARY 2015/27TH MAGHA, 1936

Mat. Appeal No. 680 of 2012 (B)

AGAINST THE ORDER IN OP 1145/2010 OF THE FAMILY COURT, KOZHIKODE
DATED 17-06-2011

APPELLANT/RESPONDENT:

K. SAFIYA
W/O. BEERAN KOYA, RESIDING AT AMBALIPARAMBIL
BEYPORE AMSOM, DESOM, KOZHIKODE 673 015.

BY ADVS. SRI.R.SUDHISH
SMT.M.MANJU
SRI.K.R.RANJITH

RESPONDENT/PETITIONER:

K.P. BEERAN KOYA, AGED 66 YEARS,
S/O. MUHAMMED, RESIDING AT AMBALIPARAMBIL
BEYPORE AMSOM, DESOM, KOZHIKODE 673 015.

BY ADV. SRI.P.V.KUNHIKRISHNAN

THIS MATRIMONIAL APPEAL HAVING COME UP FOR ADMISSION ON
16-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

I.A.NO.2790/2012 IN Mat. Appeal N0.680/2012

DISMISSED

SD/- **K.T.SANKARAN, JUDGE**

16/02/2015

SD/- **K.ABRAHAM MATHEW, JUDGE**

//TRUE COPY//

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**K.T.SANKARAN &
K. ABRAHAM MATHEW, JJ.**

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Dated this the 16th day of February, 2015

JUDGMENT

K.T.Sankaran, J.

The appellant Safiya is the wife of the respondent Beeran Koya. Beeran Koya filed O.P.No.1145 of 2010 on the file of the Family Court, Kozhikode against Safiya for declaration of half right over the plaint schedule property and for partition of the said property. The Family Court passed a preliminary decree dated 17.6.2011 holding that the appellant and the respondent would be entitled to half right each in the property. The decretal portion of the judgment reads as follows:

“In the result, this petition is allowed and a preliminary decree is passed as follows:

- (i) That the petition schedule property to be divided into two equal shares and half of the said share is to be allotted to the share of the petitioner.
- (ii) The respondent is entitled for the remaining half share on payment of requisite court fee.

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- (iii) The petitioner is entitled for mesne profits from the schedule property from the date of this petition till giving separate possession of his right over the said property.
- (iv) The cost of this proceedings shall be met out of the estate.
- (v) The house in the property has to be allotted towards the share of the respondent and children, who are residing there.
- (vi) In order to equalise the shares of the parties, the ovelty amount to be fixed.
- (vii) Fixation of the mesne profits and ovelty amount are relegated to the final decree proceedings.
- (viii) The petitioner is at liberty to apply for final decree proceedings.
- (ix) This petition is adjourned to sine die.”

2. Beeran Koya filed final decree application No.1855 of 2011 before the Family Court and that application is pending.

3. Meanwhile, the parties settled their disputes in Crl.A.No.291 of 2013 on the file of the Sessions Court, Kozhikode and an agreement was executed incorporating the terms of settlement. The original of the agreement is produced as Annexure A1 in I.A.No.558 of 2015 filed in this Matrimonial Appeal.

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4. One of the conditions in the agreement is to withdraw the Matrimonial Appeal and to withdraw the final decree application. In the same paragraph of the agreement, it is also stated that appropriate steps should be taken in the Matrimonial Appeal to set aside the preliminary decree passed in O.P.No.1145 of 2010.

5. I.A.No.558 of 2015 is filed by the appellant to accept Annexure A1 settlement agreement and to permit the appellant to withdraw the appeal after recording the terms of the agreement.

6. Heard the learned counsel for the appellant and the learned counsel for the respondent. Both the counsel submitted that paragraph 3 of the compromise, to some extent, is unworkable. When it is agreed to withdraw the Matrimonial Appeal, there cannot be a disposal of the Matrimonial Appeal setting aside the preliminary decree which is under challenge in the Matrimonial Appeal. Both the counsel submitted that let the Matrimonial Appeal be disposed of as withdrawn and that, at the same time, the parties may be permitted to move the Family Court to record the compromise and to set aside

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the preliminary decree passed by the Family Court. The suggestion made by the counsel appearing for the parties is just and reasonable.

Accordingly, the Matrimonial Appeal is dismissed as withdrawn. The Registry shall return the original of Annexure A1 agreement produced along with I.A.No.558 of 2015, after retaining a photocopy in the file, to enable the appellant to produce the same before the Family Court, Kozhikode in O.P.No.1145 of 2010 and to record the compromise there and to get appropriate reliefs.

(K.T.SANKARAN)
Judge

(K. ABRAHAM MATHEW)
Judge

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