

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC

&

THE HONOURABLE SMT. JUSTICE P.V.ASHA

WEDNESDAY, THE 30TH DAY OF SEPTEMBER 2015/8TH ASWINA, 1937

RFA.No. 797 of 2013 ()

AGAINST THE JUDGMENT AND DECREE IN OS 82/2011 of SUB COURT, VADAKARA
DATED 24-07-2013

APPELLANT/1ST DEFENDANT:

MOHANDAS, AGED 52 YEARS
S/O.KUNHIRAMAN, RESIDING AT MANAKKAL HOUSE
PONMERI PARAMBIL,
PONMERI AMSOM DESOM OF VADAKARA TALUK
WRONGLY SHOWN AS MOHANDAS, S/O.KUNHIRAMAN,
AGED 41 YEARS,
RESIDING AT KINATTINTAVIDA HOUSE
NEAR PUTHUPANAM CHEENAMVEEDU LP.SCHOOL
VATAKARA TALUK.

BY ADVS.SRI.V.V.SURENDRAN
SRI.P.A.HARISH
SMT.RESMI NANDANAN

RESPONDENT(S)/PLAINTIFF AND 2ND DEFENDANT:

1. RAMADAS
S/O.KUNHIRAMAN, RESIDING AT NILAVANA MANAYIL HOUSE
P.O.VILLIAPPILLY, VATAKARA TALUK
REPRESENTED BY POWER OF ATTORNEY HOLDER T.SILBA
W/O.RAMADAS, RESIDING AT MANAKKAL HOUSE
P.O.PONMERI PARAMBIL, PONMERI, VATAKARA
KOZHIKODE-673541.

2. N.K.KUSUMAKUMARI
D/O.KUNHIRAMAN, RESIDING AT PUTHANPURAYIL HOUSE
P.O.ERUMAYOOR, VIA KUZHALMANDHAM, ERUMAYUR AMSOM DESOM
PALAKKAD-678546.

R-R1 BY ADV. SRI.C.K.RAMAKRISHNAN

THIS REGULAR FIRST APPEAL HAVING BEEN FINALLY HEARD
ON 30-09-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

ANTONY DOMINIC & P.V ASHA, JJ.

R.F.A No.797 of 2013

Dated this the 30th day of September, 2015

JUDGMENT

Antony Dominic, J.

The 1st defendant in O.S.No.82 of 2011 on the file of the Sub Court, Vadakara, is the appellant. The suit was filed by the 1st respondent herein, seeking partition of the plaint schedule property and also allotment of the building therein in his favour. Though the appellant did not contest the partibility of the plaint schedule property, he contended for allotment of the building in the plaint schedule property to him.

2. Before the trial court, the plaintiff did not adduce any oral evidence and the only evidence was Ext.A1, the certified copy of a document, by which the property in question was acquired. On behalf of the appellant, himself and another witness were examined as DWs 1 and 2. By the judgment under appeal, the court below passed the preliminary decree for the partition of the property. It also held that in equity, the house in the plaint schedule property is to be allotted to the 1st respondent/plaintiff after valuation. In this appeal, the appellant

impugns only that part of the preliminary decree which orders that the house in the plaint schedule property is to be allotted to the share of the plaintiff after valuation.

3. We heard the learned counsel for the appellant and the learned counsel for the 1st respondent. There is no appearance or representation on behalf of the 2nd respondent.

4. As we have already stated, the only question that is raised for consideration is whether the court below was justified in allotting the residential house to the plaintiff, in the preliminary decree. Both the plaintiff and the 1st defendant had claimed allotment of the residential house, in their favour. Both of them also pleaded their justifications for the same. However, in spite of the claim made by him, the plaintiff did not adduce any oral or documentary evidence to substantiate the same. On the other hand, the appellant had examined, not only himself, but also another witness, to substantiate his claim. It is taking into account all these pleadings and evidence thus available, the court below has passed the decree.

5. In our view, when such rival claims were made and that too, when no evidence was adduced by the plaintiff and only the oral evidence was adduced by the defendant, in the facts of

this case, such evidence was insufficient for the court to enter a finding on the rival claims of the parties, for allotment of the residential house. According to us, the court below, in such circumstances, should have deferred the adjudication on this particular issue, to the final decree stage, when the parties could have adduced sufficient evidence to substantiate their respective claims.

In such circumstances, the preliminary decree to the extent that the house in the plaint schedule property is allotted to the share of the 1st plaintiff after valuation, vide clause (c) of the judgment and decree, is vacated. It is clarified that the issue will be enquired into at the final decree stage, when the parties will be free to adduce appropriate evidence as they deem fit.

With the above observations, the appeal is disposed of.

Sd/-

ANTONY DOMINIC
Judge

Sd/-

P.VASHA
Judge

rtr/

/true copy/

P.S to Judge