

Kerala High Court

Ashok Kumar vs Raveendran on 24 July, 2008

IN THE HIGH COURT OF KERALA AT ERNAKULAM

RP.No. 769 of 2008(E)

1. ASHOK KUMAR, S/O R.P.PARAMASWERAN,  
... Petitioner

Vs

1. RAVEENDRAN, S/O LATE R.P.PARAMESWARAN,  
... Respondent

2. RAJESWARI, W/O P.K.VIJAYAN,

For Petitioner :SRI.JOSE PALLATTUKARAN

For Respondent : No Appearance

The Hon'ble MR. Justice K.P.BALACHANDRAN

Dated :24/07/2008

O R D E R

K.P.BALACHANDRAN, J.

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R. P. No.769 of 2008 in  
R. S. A. No.467 of 2008  
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Dated this the 24th day of July, 2008

ORDER

This review petition is filed by the appellant through a counsel engaged afresh seeking review of the judgment passed by this Court on 24/06/08 in R.S.A.467/08 after hearing counsel on both sides.

2. It is seen from the judges papers that when this R.S.A came up for admission hearing on 05/06/08 and counsel advanced arguments on behalf of the appellant, this Court was of the view that there is absolutely no merit in the R.S.A, there being no substantial question of law involved and while the appeal was about to be dismissed in limine counsel submitted that at least notice may

be ordered to the respondents for the limited purpose of having the R.S.A referred to Adalath or for settlement otherwise on mediation as otherwise an opportunity for the matter being settled amicably between the brothers and sister would be deprived of. It was in view of the said submission that notice was issued to the respondents on admission by speed post with acknowledgment due and the case was adjourned to 24/06/08.

3. When the matter came up before this Court on 24/06/08, respondents also entered appearance through counsel. Counsel for the respondents submitted that the property which is subject matter of partition having only 4 and odd cents was found to be not feasible to be divided equally by metes and bounds so as to render the plots worthy to be put to use and so in final decree proceedings the property was ordered to be put to auction among the sharers and accordingly auction was conducted and that in the auction respondents 1 and 2 jointly bid the property for an amount of Rs.18 lakhs and odd and also deposited an amount of Rs.6,33,000/- and odd towards the share of the appellant and only a nominal amount remains to be deposited and that happened on account of a mistake in calculation and that there is no chance for any compromise being effected between the parties at that stage.

4. It was in the above circumstance that counsel for the appellant submitted that the appellant be granted at least three months' time to surrender vacant possession of the scheduled building in his occupation and accordingly, time was granted also on consent of counsel for the respondents. But for the final request so made by the counsel for the appellant, the R.S.A which was found to be devoid of any merit there being no question of law and much less any substantial question of law was to be dismissed in limine without any relief at all granted to the appellant. It is such a judgment that is sought to be got reviewed by the appellant filing this review petition through another lawyer giving up engagement of the earlier counsel and advancing complaints against him.

5. Counsel who is now appearing for the appellant/petitioner submits that the shop rooms were not included in the schedule to the partition by the counsel in the court below and the appellant was not aware of the non- inclusion of the shop rooms in the plaint because the plaint was drafted in English. If that be so, I see that all the pleadings in this R.S.A and also in this Review Petition are in English and even the affidavit sworn to by the petitioner in English shows that he has signed in it without properly understanding what he has sworn to as it does not contain a certification by the counsel that what all is written in the affidavit is translated into Malayalam and the deponent was made to understand the contents to which he was swearing. Such are methods which a cantankerous litigant may adopt to avoid parting with possession of property when he is in possession of the property to the exclusion of the other co-sharers.

6. Further, in view of the averment in the Review Petition that the property which is worth more than Rs.40 lakhs was bid in auction by the respondents for a paltry amount of Rs.18 lakhs the counsel for the petitioner was asked as to whether the petitioner is prepared to take the property for Rs.40 lakhs so that he himself will get 1/3rd share out of the said amount to be deposited or he needs to deposit only 2/3rd of Rs.40 lakhs so that himself as also the other sharers who are the respondents who purchased the property in auction will get the benefit. Counsel for the respondents agreed to that course, setting aside the sale in favour of the respondents. Counsel for the petitioner

consulted the review petitioner who is present in the court and submitted that he is not prepared to take the property for Rs.40 lakhs but that he wants the property to be put to public auction. In other words what was done by the trial court was to order an auction between the sharers and the appellant wants the property to be put to auction in public. Counsel for the respondent points out that the decision taken by the final decree court to put the property for auction between the sharers was assailed before this Court in W.P.(C) No.10989/07 by the present petitioner/ appellant and the action taken by the final decree court was approved by this Court vide judgment in the Writ Petition wherein it was observed by this Court that it is settled practice that in a partition suit when the property is incapable of being divided by metes and bounds, in order to protect the interests of all the parties, firstly the property is proposed to be sold among sharers and if it is not possible, in public auction and that it is that course that was adopted by the learned Munsiff in the final decree proceedings and that it cannot be found fault with. The appellant/petitioner who advances contention on the lines aforementioned by moving a review petition before this Court does so despite a finding entered into by this Court as regards the propriety of property being put to auction between the sharers vide judgment in W.P.(C) 10989/07 and deserves to be confirmed. Similar is his conduct in making allegations against his own counsel who appeared before this court and attempted to safeguard his interest.

7. In the result, I dismiss this Review Petition with cost of Rs.1.000/- to the counsel for the respondents.

K.P.BALACHANDRAN, JUDGE kms/-