

Kerala High Court

Rahiyath Azad vs Anzar Rahim on 25 May, 2010

IN THE HIGH COURT OF KERALA AT ERNAKULAM

WP(C).No. 11677 of 2010(0)

1. RAHIYANATH AZAD,D/O.LATE ISMAIL,  
... Petitioner

Vs

1. ANZAR RAHIM,PALM GROVE,THEKKEVILA,KOLLAM  
... Respondent

2. AZAD RAHIM,MALIKA VEEDU,KOTTAKKAKOM WARD

3. LAILA ASLAM,BLUE MOUNT, KOTTAKAKOM WARD,

4. JAMEELA SALI, LEPPERRY HOUSE,ALISSERY

5. SHAMEELA FAZAL,MANAPPATT HOUSE, NEAR

6. THE OFFICIAL RECEIVER,DISTRICT COURT,

For Petitioner :SRI.P.B.KRISHNAN

For Respondent :SRI.BABU KARUKAPADATH

The Hon'ble MR. Justice THOMAS P.JOSEPH

Dated :25/05/2010

O R D E R

THOMAS P.JOSEPH, J.

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W.P(C) No.11677 of 2010

and

W.P(C) No.11681 of 2010

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Dated this the 25th day of May, 2010

J U D G M E N T

In a suit for partition - O.S. No.205 of 1973 on the file of learned Sub Judge, Kollam while the learned Sub Judge passed a preliminary decree appointed an Official Receiver to take possession of the property. Wife of defendant No.1 who is not a party to the suit claiming to be interested and affected by the judgment and decree filed Ext.P3, application under Section 151 of the Code of Civil Procedure claiming that the property in her possession is not liable to be proceeded against. She also applied for a carbon copy of the judgment dated 31.03.2010 to enable her prefer an appeal. As carbon copy of the judgment was not issued to her she filed W.P(C) No.11677 of 2010 for a direction to the learned Sub Judge to dispose of Ext.P3, application referred to above and for stay of all proceedings of the Official Receiver to take custody or management of A schedule property in the suit.

2. Writ Petition No.11681 of 2010 is preferred by defendant No.1 in the suit, also affected by the judgment and W.P(C) No.11677 of 2010 & WP(C) No.11681 of 2010 decree dated 31.03.2010 seeking a direction to issue a carbon copy of the judgment applied for. So far as that petition is concerned learned counsel for petitioner submits that petitioner has already been issued with a carbon copy of the judgment. In Writ Petition No.11677 of 2010 petitioner who is a third party is yet to get a carbon copy of the judgment. In both the cases this Court as per order dated 05.04.2010 granted interim stay as prayed for two months from that day which is to expire by 04.06.2010. So far as Writ Petition No.11681 of 2010 is concerned, the main prayer in that petition has become infructuous since carbon copy of the judgment has already been issued to the petitioner and it is open to the petitioner to challenge the judgment and decree in appropriate proceedings as provided under law.

3. There is dispute between the parties as to whether the Official Receiver has already taken possession of the property concerned. While petitioners assert that Official Receiver has only applied for assistance of police to take possession of the property, learned counsel for respondents would contend that as per records submitted by the Official Receiver in the court below he has already taken possession of the property. Question W.P(C) No.11677 of 2010 & WP(C) No.11681 of 2010 whether Official Receiver has taken possession of the property is not a matter required to be resolved in these proceedings and hence I refrain from doing so.

The Writ Petitions are disposed of in the following lines:

(i) Writ Petition No.11681 of 2010 is closed since carbon copy of the judgment has already been issued to the petitioner.

(ii) Writ Petition No.11677 is disposed of directing the learned Sub Judge, Kollam to issue carbon copy of the judgment in O.S. No.205 of 2007 to the petitioner as early as possible if it is applied for in accordance with the relevant rules.

(iii) It is directed that the interim order of stay passed by this Court in both these cases on 5.04.2010 (for a period of two months from that date) will remain in force in case the Official Receiver has not already taken possession of the property.

THOMAS P. JOSEPH, JUDGE.

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