

Kerala High Court

Jainulabdheen vs Foujneesa & 6 Others on 15 September, 2009

IN THE HIGH COURT OF KERALA AT ERNAKULAM

WP(C).No. 10218 of 2009(0)

1. JAINULABDHEEN

... Petitioner

Vs

1. FOUJNEESA & 6 OTHERS

... Respondent

For Petitioner :SRI.G.HARIHARAN

For Respondent :SRI.SAJAN VARGHEESE K.

The Hon'ble MR. Justice S.S.SATHEESACHANDRAN

Dated :15/09/2009

O R D E R

S.S.SATHEESACHANDRAN, J.

W.P.(C).No.10218 of 2009 - 0

Dated this the 15th day of September, 2009

J U D G M E N T

Writ petition is filed seeking the following reliefs:

"i) To set aside Exhibit P7 order passed by the Munsiff Court, Chittur in I.A.No.982/2009 in O.S.No.400/2005.

ii) To direct the Munsiff Court, Chittur to examine Sri.Thajudheen, S/o.Azeez Rawthar, Ootara, Vadavannur village, Chittur Taluk as defence witness.

iii) To restrain the Munsiff Court, Chittur in proceeding with O.S.No.400/2005 until giving an opportunity to the petitioners to examine the independent witness cited by them."

2. Petitioners are the two defendants in O.S.No.100 of 2000 on the file of the Munsiff Court, Chittur. Suit is one for partition and the first respondent is the plaintiff and the other respondents are the co-defendants in the suit. Petitioners claimed title and possession over the suit property, which originally belonged to the father of the first petitioner and husband of the second petitioner, under an oral gift. The respondents in the writ petition are the other children of the second petitioner. In order to substantiate the claim of oral gift, W.P.(C).No.10218 of 2009 - O petitioners wanted to examine two witnesses apart from the second petitioner, the mother. On the date fixed for recording the evidence of the petitioners, the second petitioner and one witness, it is submitted, were present. The other witness cited by the first petitioner to prove the gift was given up. The second petitioner was examined. But the examination of the witness produced could not be proceeded with as one of his close relatives passed away, according to the learned counsel for the petitioners. The request made by the petitioner to the court below to have the examination of that witness on a later date was opposed to by the plaintiff, and the learned Munsiff, after hearing both sides, turned down that request vide Ext.P7 order. Propriety and correctness of Ext.P7 order is challenged in the writ petition invoking the supervisory jurisdiction vested with this Court under Article 227 of the Constitution of India.

3. I heard the learned counsel on both sides.

4. The examination of the witness could not be carried out, according to the learned counsel for the petitioner, in view of the circumstances beyond the control of the petitioners. On the other hand the learned counsel for the first respondent/plaintiff submitted that Ext.P7 order of the court below does not warrant W.P.(C).No.10218 of 2009 - O any interference, as granting permission to the petitioner to examine the witness would lead filling up the lacunas of the evidence of the second petitioner who had already been examined as a witness in the case. I find the very same reason canvassed by the counsel found merit and convincing to the learned Munsiff as well to disallow the request of the petitioners to examine the witness by providing them a fresh opportunity. Even assuming that there is some lacuna in the evidence of the second petitioner, I find it hard to accept the submission that it can be filled up by examining the other witness and through his evidence. If there is lacuna, it will remain as a lacuna. That could not be filled up by evidence of any other witness. Ext.P7 cannot be sustained. I direct the court below to provide an opportunity to the petitioners to examine the witness to prove their case. The court may then on the basis of evidence let in dispose the suit at the earliest.

Writ petition is disposed of as above.

S.S.SATHEESACHANDRAN, JUDGE.

bkn/-