

Kerala High Court

Gourikuttiamma @ Gouri amm vs Mony on 27 August, 2008

IN THE HIGH COURT OF KERALA AT ERNAKULAM

WP(C).No. 25871 of 2008(E)

1. GOURIKUTTIAMMA @ GOURI AMM, D/O PAMADATH
... Petitioner

Vs

1. MONY, AGED 47, S/O AALISSERY THETTAYIL
... Respondent

For Petitioner :SRI.G.SREEKUMAR (CHELUR)

For Respondent : No Appearance

The Hon'ble MR. Justice M.SASIDHARAN NAMBIAR

Dated :27/08/2008

O R D E R

M.SASIDHARAN NAMBIAR, J.

.....
WP(C).No. 25871 OF 2008

.....
DATED THIS THE 27th DAY OF AUGUST, 2008

JUDGMENT

Petitioner is the plaintiff and respondent, the defendant in O.S.69 of 2006 on the file of Munsiff Court, Aluva, a suit for fixation of the boundaries and for recovery of possession. A Commission was appointed. Commissioner submitted Ext.P6 report and plan. Petitioner thereafter filed I.A.1840 of 2008, an application to remit the report and plan to the Commissioner to identify the property with reference to the plan produced by respondent. Learned Munsiff, under Ext.P9 order, dismissed the application. It is challenged in this petition filed under Article 227 of Constitution of India.

2. Learned counsel appearing for petitioner was heard.

3. In view of the order to be passed in this petition, it is not necessary to issue notice to respondent.

4. Ext.P8 application was dismissed by learned Munsiff on two grounds. Firstly, it was found that petition is highly belated. Secondly, it was found that petitioner being the plaintiff, is the master of her suit and she need not identify the property with reference to the case pleaded by respondent. Learned counsel pointed out that the claim for kudikidappu was settled before Land Tribunal in O.A. 2 of 1996, whereunder Ext.P1 compromise petition was filed and accepting the compromise petition, O.A was disposed and under the compromise petition, the property which could be claimed by respondent was fixed with reference to Ext.P7 plan and the prayer in Ext.P8 application is only to fix the property with reference to that plan and for a proper resolution of the dispute between the parties, learned Munsiff should have allowed the application.

5. For the sole reason that petition is belated, learned Munsiff should not have dismissed the application. Even if there was delay, delay could be compensated by cost. Similarly, when petitioner himself wanted to identify the property, admitting the case of respondent, it cannot be said that petitioner is not to identify the property based on the document filed by the respondent. In such circumstances, Ext.P9 order is quashed. Learned Munsiff is directed to pass fresh order in I.A.1840 of 2008 after hearing the parties in accordance with law.

M.SASIDHARAN NAMBIAR, JUDGE lgk/-