

Kerala High Court

Lissy Antony vs K.A.George on 13 December, 2010

IN THE HIGH COURT OF KERALA AT ERNAKULAM

OP(C).No. 1054 of 2010(0)

1. LISSY ANTONY, W/O.CHIRAYATH ANTONY
... Petitioner

Vs

1. K.A.GEORGE, S/O.LAGE G.A.ABRAHAM,
... Respondent

For Petitioner :SRI.TOJAN J. VATHIKULAM

For Respondent : No Appearance

The Hon'ble MR. Justice THOMAS P.JOSEPH

Dated :13/12/2010

O R D E R

THOMAS P.JOSEPH, J.

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O.P(C) NO.1054 of 2010

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Dated this the 13th day of December, 2010

J U D G M E N T

Defendant in O.S. No.444 of 2004 of the court of learned Additional Sub Judge, North Paravur is the petitioner before me challenging correctness of Ext.P3, order dated 23.01.2009. Respondent sued petitioner for specific performance of an agreement for sale. There was a compromise decree passed in favour of respondent on 08.04.2005. Petitioner filed I.A. No.4822 of 2007 to recall the compromise decree on the ground of fraud and coercion. That application was dismissed by the impugned order dated 21.01.2009. That order was challenged in F.A.O. No.119 of 2010. That appeal also was dismissed as not maintainable vide judgment dated 24.09.2010. Thereafter petitioner has filed this Original Petition under Article 227 of the Constitution on 07.12.2010. It is contended by learned counsel that court below has taken an erroneous view that I.A. No.4822 of 2007 was not maintainable under Rule 3 of Order XXIII of the Code of Civil Procedure (for short, "the Code") and

that the finding entered by the learned Sub Judge is perverse.

2. I have gone through the order under challenge. Case O.P(C) No.1054 of 2010 of petitioner is that she had entered into an agreement with one Aby George who was out of India and while filing the written statement agreeing for a compromise decree she was given the impression and made to believe that the suit is filed on behalf of the said Aby George and accordingly she agreed for the compromise decree. She stated so as P.W.1 in the court below. Respondent contended that petitioner had filed written statement admitting the contentions raised in the plaint and the suit was decreed on 08.04.2005. He deposited the balance purchase price of `13.50 lakhs in the court below. He denied that there was fraud or coercion in the matter as pleaded by the petitioner.

3. It came out in evidence that the plaint and written statement were prepared in Malayalam and that petitioner was a one time member of the local authority. It also came out that petitioner had applied to rescind the contract (obviously under Section 28 of the Specific Relief Act) alleging that respondent refused to take steps to execute the document. She also filed application to withdraw the balance amount deposited by the respondent. There was yet another application for transferring the amount to Fixed Deposit. Court below considered these matters and held that contention of petitioner that she happened to be a party in the compromise decree on account of fraud and O.P(C) No.1054 of 2010 coercion cannot be accepted.

4. No doubt when a compromise on which the decree is passed is vitiated by any vitiating circumstance proper course is to seek the judgment and decree to be recalled by recourse to Rule 3 of Order XXIII of the Code. A separate suit is bad as specifically stated in Rule 3A of Order XXIII of the Code. Hence the view taken by the learned Sub Judge that I.A. No.4822 of 2007 is not maintainable cannot be accepted. But that finding of the court below is of no consequence since learned Sub Judge has decided the application on merit as well. On going through the records I am not persuaded to think that finding entered by the learned Sub Judge is either perverse or incorrect having regard to the facts and circumstances stated above. It is also relevant to note that though F.A.O. No.119 of 2010 was disposed of on 24.09.2010 this petition is preferred only on 07.12.2010. In the circumstances I do not find reason to interfere with the impugned order.

Original Petition fails and it is dismissed.

THOMAS P. JOSEPH, JUDGE.

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