

Kerala High Court

Koya Haji vs T.Ravisankar on 29 September, 2009

IN THE HIGH COURT OF KERALA AT ERNAKULAM

WP(C).No. 27154 of 2009(0)

1. KOYA HAJI, S/O.MUHAMMAD HAJI  
... Petitioner

Vs

1. T.RAVISANKAR  
... Respondent

For Petitioner :SRI.ALEXANDER GEORGE

For Respondent : No Appearance

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

Dated :29/09/2009

O R D E R

S.S.SATHEESACHANDRAN, J.

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W.P.(C).No.27154 of 2009 - 0  
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Dated this the 29th day of September, 2009

J U D G M E N T

The writ petition is filed seeking the following reliefs:

"i) To call for the records leading to this case and peruse the same.

ii) To issue a direction to the Sub Court, Ottappalam to consider I.A.No.325/2009 filed by the petitioner seeking impleading in O.S.No.32/67 within a stipulated time.

iii) To direct the Sub Court, Ottappalam not to proceed further with regard to the sale of the property which is the subject matter of O.S.No.22/07 on the file of the Munsiff Court, Manjeri till a decision is taken on the impleading petition".

2. Petitioner, who is not a party to the proceedings covered by O.S.No.32 of 1967 on the file of the Sub Court, Ottappalam, seeks issue of directions/orders to that court for considering the application moved by him for his impleadment as an additional party in the proceedings. O.S.No.32 of 1967 on the file of the above court is a suit for partition in which a preliminary decree had been passed allotting shares to the parties who are W.P.(C).No.27154 of 2009 - O found entitled thereto in the plaint properties. Pursuant thereto an application filed for passing of a final decree is pending consideration and a receiver appointed by the court is in possession of the properties. A suit filed by the receiver against the present petitioner as O.S.No.22 of 2007 alleging trespass and seeking a decree of permanent prohibitory injunction is now pending before the Munsiff Court, Manjeri. An application for interim injunction moved by the receiver/plaintiff was allowed by the trial court and it was challenged by the present petitioner in appeal. The appellate court reversing the order of injunction directed the court below to consider the matter afresh and that awaits such consideration. That circumstance is canvassed by the petitioner to seek his impleadment in the final decree proceedings in the suit for partition.

3. I heard the learned counsel for the petitioner.

4. The fact that he claims possession over the property covered by the suit for partition is no ground enabling the petitioner to get himself impleaded in the final decree proceedings. The further fact that the receiver had instituted a W.P.(C).No.27154 of 2009 - O suit against the petitioner alleging trespass and that is pending for consideration is also not a circumstance enabling the petitioner for his impleadment as an additional party in a final decree proceedings. petitioner has to work out his remedy in appropriate proceedings. Mere fact that he has moved an application before the court below for his impleadment in the final decree proceedings will not entitle him to seek for issue of orders/directions from this Court for consideration of that application. He may invite the attention of the court below to his application, and, if so invited, the court below shall dispose that application on its merit.

Writ petition is disposed as indicated above.

S.S.SATHEESACHANDRAN, JUDGE.

bkn/-