
(2012) 03 KL CK 0269
In the High Court Of Kerala
Case No : C.R.P. No. 385 of 2010

Alice Markose

APPELLANT

Vs

Yesudas Prasad and others

RESPONDENT

Date of Decision : 29-03-2012

Acts Referred:

Citation : AIR 2012 Ker 189 : (2012) 2 ILR (Ker) 684 : (2012) 2 KLJ 763

Hon'ble Judges : K.T. Sankaran, J

Bench : Single Bench

Advocate : K.A. Hassan and Smt. Julia Priya Reshmy, for the Appellant; Karjet Koduvath and Sri S. Nidheesh, for the Respondent

Judgement

Mr. Justice K.T. Sankaran

1. The petitioner, the plaintiff in O.S. No. 744 of 1997 on the file of the Court of the Additional Munsiff of Kottayam, is aggrieved by the order dated 4-1-2010 in I.A. No. 3311 of 2009, by which the court below rejected the prayer made by the petitioner to engross the final decree on stamp paper on deposit of the proportionate value of stamp duty in respect of the share of the plaintiff. The preliminary decree provides for division of the property into four shares. The plaintiff is entitled to 1/4 share. The final decree was passed on 21-1-2009. It was not engrossed on stamp paper. All the sharers were not prepared to deposit in Court the amount required for the non-judicial stamp paper for engrossing the decree in proportion to the value of their shares. The petitioner wanted to get the final decree engrossed on stamp paper. She offered to deposit the proportionate amount in respect of the value of her share. But, she was not prepared to deposit the entire amount required for the non-judicial stamp paper for engrossing the final decree. The court below rejected the request of the petitioner.

2. A final decree in a partition suit shall be prepared on nonjudicial stamp paper of the requisite value. A copy of the final decree shall be sent to the Sub

Registrar for registration. A final decree cannot be engrossed on stamp paper of the value proportionate to the value of the share of one or more sharers. The entire amount required for stamp paper to engross the final decree should be deposited. Even if some of the sharers fail to deposit their share of the amount required for non-judicial stamp paper, any other party is entitled to deposit the entire amount. The excess amount paid by a sharer can be realised from the sharer who failed to deposit his share of the amount

3. Rule 236 of the Civil Rules of Practice reads as follows:

236. Furnishing of stamp paper for final decree.--The Court shall, in its final judgment in a partition suit, direct the parties to deposit in Court the amount required for the non-judicial stamp paper for engrossing the decree in proportion to the value of their shares and any party failing to deposit the amount as directed within the time allowed shall be deemed to be in default and shall be liable for the costs of the adjournment. The Court may allow any party to deposit the entire amount or the share of any other party and direct the same to be realised from the party or parties liable for the same.

4. The court below was right in dismissing the application. Learned counsel for the petitioner submitted that the petitioner does not have the financial resources to deposit the entire amount required for the non-judicial stamp paper. It is submitted that the entire extent of property is in the possession of one of the sharers. The petitioner is denied possession of the share due to her only on the ground that the final decree is not engrossed on stamp paper. In the facts and circumstances of the case, as an interim measure, the petitioner would be free to approach the court below for granting possession of the share allotted to her as per the final decree. No other sharer could validly raise any objection to the grant of such prayer. If the parties fail to deposit the amount required for non-judicial stamp paper for engrossing the final decree, the court below would be free to proceed as provided under Rule 238 of the Civil Rules of Practice and consign the records of the case to the record room.

With the above observations, the Civil Revision Petition is disposed of.