
(2011) 06 KL CK 0213
In the High Court Of Kerala
Case No : OP (C) No. 733 of 2010 (O)

Kallyani and K. Padmavathy

APPELLANT

Vs

Sheelavathy

RESPONDENT

Date of Decision : 03-06-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 10
Constitution of India, 1950 — Article 227

Citation : (2011) 06 KL CK 0213

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

Bench : Single Bench

Advocate : Kodoth Sreedharan, for the Appellant; M. Ramesh Chander, for the Respondent

Final Decision : Dismissed

Judgement

K.T. Sankaran, J.—The Petitioners challenge Ext.P6 order dated 18th August, 2010 in I.A. No. 386 of 2010 in I.A. No. 1057 of 2009 in O.S. No. 160 of 1985, on the file of the Court of the Munsiff of Hosdurg, by which, the court below dismissed the application filed by the Petitioners u/s 10 of the Code of Civil Procedure.

2. O.S. No. 160 of 1985 was filed by the Respondent before the Munsiff's Court, Hosdurg claiming partition. A preliminary decree was passed on 6.9.1989. The Plaintiff filed A.S. No. 71 of 1989 and Defendants 1 and 2 filed A.S. No. 2 of 1990, challenging the judgment and decree of the trial court. The appeal filed by the Plaintiff was allowed and the appeal filed by Defendants 1 and 2 was dismissed by the First Appellate Court. Defendants 1 and 2 challenged the judgment and decree of the lower Appellate Court in S.A. No. 734 of 1993, which was dismissed by this Court as per Ext.P1 judgment dated 12th August, 2008. Though Defendants 1 and 2 filed a SLP before the Honourable Supreme Court, that was dismissed as per Ext.P2 order dated 18.12.2008. Ext.P2 order rea as follows:

Delay condoned.

The SLP is dismissed. However, all the contentions raised herein shall remain open.

3. On the basis that the contentions raised in the SLP were left open, the Petitioners filed O.S. No. 370 of 2009 on the file of the Court of the Munsiff of Hosdurg. The contention of the Petitioners is that the proceedings before the Land Tribunal became final inter-parties and, therefore, the Plaintiff in O.S. No. 160 of 1985 is not entitled to claim partition. The first Respondent (Plaintiff in O.S. No. 160 of 1985) contended that the Petitioners herein are not entitled to raise that contention in O.S. No. 370 of 2009 as the said contention is barred by res judicata.

4. The Petitioners filed I.A. No. 386 of 2010 in the final decree proceedings in O.S. No. 160 of 1985 to stay the final decree proceedings till the disposal of O.S. No. 370 of 2009. That application was filed u/s 10 of the Code of Civil Procedure.

5. The court below dismissed the application on the ground that u/s 10 of the Code of Civil Procedure, only the subsequent suit can be stayed and the former suit cannot be stayed. The view taken by the court below is correct. There cannot be any doubt that Section 10 would not be applicable to stay the trial of the suit instituted earlier in point of time. The order passed by the court below is legal and proper. No interference is called for in the exercise of the jurisdiction under Article 227 of the Constitution of India.

6. The Original Petition is, accordingly, dismissed.

Sri. Kodoth Sreedharan, the learned Counsel appearing for the Petitioners, submitted that the proper remedy of the Petitioners was to file an application for an interim order against the continuance of the final decree proceedings in O.S. No. 160 of 1985. The counsel submitted that dismissal of the application u/s 10 of the CPC and the dismissal of this Original Petition should not stand in the way of the Petitioners seeking appropriate remedy. The order passed by the court below dealt with only the application u/s 10 of the Code of Civil Procedure. In this Original Petition also, only the same question could be considered. Dismissal of the application u/s 10 would not debar the Petitioners from claiming any other relief, if otherwise they are entitled to get such relief under law.