
(1990) 12 KL CK 0003
In the High Court Of Kerala
Case No : C.R.P. 2323/90

Rajamma and Others

APPELLANT

Vs

Ethal Rani and Another

RESPONDENT

Date of Decision : 05-12-1990

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 15, Order 21 Rule 15(2), Order 21 Rule 16

Citation : (1991) 1 KLJ 214

Hon'ble Judges : M.M. Pareed Pillay, J

Bench : Single Bench

Advocate : P. Gopalakrishnan Nair, for the Appellant; P. Sukumaran Nair, for the Respondent

Final Decision : Dismissed

Judgement

M.M. Pareed Pillay, J.—Revision Petitioners are Defendants 39 to 43 in O.S. 14 of 1960 of the Additional Munsiffs Court, Neyyattinkara. They challenge the order in E.P. 663 of 1990 allowing the 24th Defendant (2nd Respondent) to take delivery of APQLMNO plot in the plan appended to the final decree. That is for himself and also on behalf of the 41st Defendant. The Sub Judge made it clear that the order will not affect the right of the 41st Defendant.

2. As per the final decree in O.S. 14 of 1960 Plaintiffs 4, 5, 7 and 9 are allotted APQLMNO plot having an extent of 53.333 cents. 24th Defendant purchased the shares of Plaintiffs 4 and 5 as per Exts. A-1 and A-2. On the strength of the assignment deeds 24th Defendant filed execution petition to get delivery of the plot for himself and on behalf of the 41st Defendant. The executing Court held that 24th Defendant is entitled to take delivery of the plot for himself and as a co-owner on behalf of the 41st Defendant who obtained rights from Plaintiffs 7 and 9.

3. Revision Petitioners contend that 24th Defendant had filed O.S. 847 of 1983 for partition of his half share in the property, that the suit was dismissed and that

A.S. 359 of 1987 is pending and so he cannot get delivery of the property in the E.P. It is also contended that 24th Defendant had filed E.P. 604 of 1989 to get delivery of property and as that petition was dismissed holding that his remedy is to file a suit for partition the present execution petition is barred by res judicata.

4. In the present execution petition the prayer is to get the delivery of the property for himself (24th Defendant) and also on behalf of the 41st Defendant. The earlier execution petition was filed to get delivery of the property ignoring the claims of 41st Defendant. Therefore it cannot be said that the decision in E.P. 604 of 1989 would operate as res judicata.

5. As 24th Defendant purchased shares of Plaintiffs 4 and 5 and as 41st Defendant purchased shares of Plaintiffs 7 and 9 it has to be considered whether D-24 alone can maintain the execution petition.

6. Order 21 Rule 16 enables the transferee of a decree to execute it even though he is not entitled to reap the entire fruits of the decree by himself. In a case where a decree has been passed jointly in favour of two or more persons and the interest of any decree-holder in the decree is transferred by assignment in writing or by operation of law, the transferee may apply for execution of the decree to the Court which passed it. Rule 16 provides that in such a situation the decree can be executed in the same manner and subject to the same conditions as if the application were made by all decree-holders. Order 21 Rule 15 enables any one or more of the joint decree-holders to execute the decree unless the decree imposes any condition to the contrary. Thus, when a decree has been passed jointly in favour of more persons than one, any one or more of such persons can execute the decree unless the decree itself bars execution without the junction of all decree-holders. Such execution will enure to the benefit of all. Even in such cases the Court shall protect the interests of the decree-holders who have not joined in the application by an order under Order 21 Rule 15(2). Contention of the 41st Defendant that 24th Defendant is not entitled to file the execution petition as he has no full right over the decree is not tenable in view of Rule 16 which really empowers him to do so. Thus the legal position is that a transferee decree-holder can very well execute the decree which would enure to the benefit of other decree-holders.

The order if the executing Court allowing the 24th Defendant to take delivery of the plot for himself and also as a co-owner on behalf of the 41st Defendant cannot be assailed. There is no merit in the C.R.P. and hence the same is dismissed with no order as to costs.