

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.881 OF 2001

Vinodan

.. Appellant

Versus

Vishwanathan

..Respondent

J U D G M E N T

Dalveer Bhandari, J.

1. This appeal is directed against the judgment dated 21st May, 1998 passed by the High Court of Kerala at Ernakulam in A.S. No.254 of 1990.

2. This is an unfortunate litigation regarding partition of a building constructed on a small piece of land between the brothers. It is not disputed that the land is jointly owned by both the brothers. The dispute is restricted over the building

which has been constructed on the part of the land. The matter has travelled from the Subordinate Court, Trichur to this Court.

3. A serious endeavour has been made by this Court to amicably settle the matter. On 6.8.2008, the following order was passed by this Court”

“In the present case, the dispute is between two brothers. The ownership of the land is admittedly joint. The short controversy is regarding the cost of construction over that plot. The case of the respondent is that he has spent the entire cost of construction whereas the case of the appellant is that he has also contributed equally to the cost of construction.

In our considered view, this controversy can be easily sorted out by the parties. We have requested the learned counsel for the parties to ensure that the matter may be amicably settled between the parties and for that purpose, we adjourn this matter for four weeks.”

The dispute could not be resolved despite efforts of this court and now we have been called upon to give our judgment in the matter.

4. Vinodan and Vishwanathan in the suit were the plaintiff and defendant before the trial court. The suit was filed before

the trial court with the prayer that the property described in the plaint schedule was purchased jointly by the parties as per the document no. 806/77 and the appellant before this court Vinodan is entitled to the half share of the property. The trial court framed the following issues:

- “(1) Whether the plaint schedule property was acquired by the plaintiff and defendant jointly or whether it was acquired by the defendant exclusively?
- (2) Whether the house was constructed by both the parties or by any of them exclusively?
- (3) Whether plaintiff is entitled to claim partition?
- (4) What is the quantum of mesne profits, if to be paid?
- (5) Equities and reservations?
- (6) Reliefs and Costs?”

The trial court after examining the evidence and hearing the parties came to the following finding on Issues no.1&2:

“I have absolutely no hesitation to hold that the plaintiff and defendant had supplied funds for the construction of the house and the house had been constructed with that amount and so the house belonged to them jointly. Similarly the property had also been purchased with the funds of both and so it also belongs to them jointly.”

5. Regarding Issue no. 3, the trial court came to the finding that it had to be divided into two equal shares and one such share was allotted to the plaintiff/appellant herein and the other share was allotted to the defendant/respondent herein.

6. Regarding Issue no.4 pertaining to mesne profits, the trial court held that the plaintiff/appellant was entitled to get mesne profits from the defendant/respondent from the date of suit till possession. The trial court further held that the quantum of mesne profits can be a matter which could be decided in the final decree proceedings after the Commissioner would submit his report.

7. The trial court directed that the property described in the plaint schedule has to be divided into two equal shares and one such share was allotted to the plaintiff/appellant and the other to the defendant/respondent.

8. The defendant/respondent Vishwanathan aggrieved by the said order of the Subordinate Court, Trichur filed an appeal before the High Court of Kerala at Ernakulam. The finding of

the High Court is that the plaintiff/appellant had been regularly sending money for the construction of the building during the period 1977-78. Exhs. B-36 and B-37 go to show that the appellant had sent Rs.55,000/- during the period 1976-77 for the construction of the building.

9. On a close scrutiny of all the documents available on record and the oral evidence, the High Court came to the conclusion that on construction of the building the appellant had spent Rs.55,000/- and the balance amount had been spent by the respondent. The High Court allowed the appeal and set aside the order and the preliminary decree passed by the trial court. In the impugned judgment, the High Court directed that the plaintiff/appellant was not entitled to divide the house and could only claim Rs.55,000/- from the respondent which will be a charge on the property of the respondent.

10. The appellant, aggrieved by the said judgment of the High Court, preferred this appeal before this court.

11. We have heard learned counsel for the parties at length. The parties have been litigating for more than 20 years and because of the bitter and long litigation it may not be conducive for the parties to stay in the same building, particularly when they have option of residing separately because of the available land with each one of them. During the course of hearing, the learned senior counsel appearing for the appellant gave an offer that his client is willing to pay Rs.5,50,000/- in lieu of the share of the respondent. No offer was given by the respondent despite opportunity granted by this court.

12. In the facts and circumstances of the case, while balancing the equities and for keeping peace and happiness in the family, we think it would be just and proper to direct the appellant to pay Rs.5,50,000/- to the respondent within a period of four months. On receiving the said amount, the respondent may construct a suitable house in his portion of the land and for that purpose we grant one year's time from the date of payment of Rs.5,50,000/- to the respondent to vacate the portion of the building which is presently in his possession and give vacant

and peaceful possession of his portion of building to the appellant in lieu of payment of Rs.5,50,000/-. We are granting long time to the respondent to vacate the portion of the building in his possession to avoid any inconvenience to the respondent. In case the respondent after one year of receiving the entire amount of Rs.5,50,000/- does not vacate the portion of the building in his possession, in that event, the Subordinate Court is directed to ensure that the possession is taken from the respondent and handed over to the appellant. Perhaps this solution may lead to ultimate peace between the families of two brothers.

13. With these observations, this appeal is accordingly disposed of leaving the parties to bear their own costs.

.....J.
(Dalveer Bhandari)

.....J.
(Harjit Singh Bedi)

**New Delhi;
February 12, 2009.**

