

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.5830/2013

K.J.AUGUSTINE (DEAD) THR. LRS. APPELLANT(S)

VERSUS

K.A.JOSEPH & ORS. RESPONDENT(S)

ORDER

When this appeal is called on for hearing, it is brought to our notice that 'K.A.Joseph', the first respondent, passed away on 21.06.2014.

We are apprised by the learned counsel representing the respondents that he died a bachelor and his estate devolved on respondent Nos. 2 and 4 to 9. Since the legal representatives of the deceased-respondent are already impleaded as party-respondents, no formal substitution is required and we record the said fact.

The present appeal arises out of a suit for partition and the parties have approached us at the stage of the preliminary decree. The area of the total estate initially was 37 cents which was acquired by 'Abraham' and 'Joseph', the predecessors-in-title of the plaintiffs and the defendants respectively. There was a sale deed executed on 14th February, 1962 in which 15.25 cents

out of the total estate was sold by the legal representatives of 'Abraham' along with 'Joseph'. Certain portion of the total estate was also acquired under the prevailing land acquisition law for construction / widening of a road.

Mr. Chitambareesh, learned senior counsel, appearing on behalf of the appellants, has argued that there was an earlier oral partition which ought to prevail and, hence, a subsequent suit for partition by the legal heirs of deceased 'Abraham' would not be maintainable.

On going through the materials disclosed, we are unable to accept the submission that there was a prior oral partition. We come to this finding, *inter alia*, in the light of the sale deed which was executed on 14th February, 1962, as also a deed of mortgage which was made Exhibit B3 before the Trial Court created on 2nd September, 1958, jointly.

It is the case of the first defendant in the suit (one of the successors in interest of 'Joseph') that land to the extent of 2 cents out of the estate, situated in Survey No. 1057 of Mattanchery Village, Kochi District, was purchased by him from Thommen Varghese, who was a purchaser through court auction in O.S. No. 193 of 1121(M.E.).

In our opinion, this part of the property has to be excluded from the partible estate. The observation of the High Court to the contrary is set aside. It shall now be open to the parties to apply for a final decree and the appellants would be at liberty to apply for contiguous apportionment in equity and if such an application is made, the Trial Court shall consider the same on facts and in accordance with law.

The present appeal stands partly allowed in the above terms.

Pending application(s), if any, shall stand disposed of.

.....J.
[ANIRUDDHA BOSE]

.....J.
[SANJAY KUMAR]

NEW DELHI;
JANUARY 11, 2024.

ITEM NO.103

COURT NO.5

SECTION XI-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No. 5830/2013

K.J.AUGUSTINE (DEAD) THR. LRS.

Appellant(s)

VERSUS

K.A.JOSEPH . & ORS.

Respondent(s)

Date : 11-01-2024 This appeal was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE ANIRUDDHA BOSE
HON'BLE MR. JUSTICE SANJAY KUMAR

For Appellant(s) Mr. V Chitambaresh, Sr. Adv.
Mr. Jogy Scaria, AOR
Ms. Beena Victor, Adv.
Mr. Vivek Guruprasad Ballekere, Adv.
Mr. Keerthipriyan E, Adv.
Ms. M Priya, Adv.

For Respondent(s) Mr. Sreegesh M.K, Adv.
Mr. A. Venayagam Balan, AOR
Mrs. Meera Karta, Adv.
Mr. Gaurav Pal, Adv.
Mr. Kiritkumar Govindlal Sheth, Adv.
Mr. Ashray Behura, Adv.
Mr. Deepak Parashar, Adv.
Mr. Puneet Thakur, Adv.

UPON hearing the counsel the Court made the following
O R D E R

The present appeal stands partly allowed in terms of the signed order which is placed on the file.

Pending application(s), if any, shall stand disposed of.

(SNEHA DAS)
SENIOR PERSONAL ASSISTANT

(RENU BALA GAMBHIR)
COURT MASTER (NSH)