

**SUPREME COURT OF INDIA**

S.Esabella

Vs.

C.Thankarajan

C.A.21804-21805/2017

(Kurian Joseph and R.Banumathi,JJ.,)

12.12.2017

**JUGMENT**

**Kurian Joseph,JJ.,**

SLP (C) No.7476-7477 of 2015

1. Leave granted.

2. The appellant has approached this Court challenging the orders passed by the High Court dated 19.06.2014 in Mat. Appeal No.211 of 2005 and order dated 10.10.2014 in R.P. No.498/2014. The issue pertains to partition. On account of impracticability of partitioning a small pathway which is around 6 feet wide, the High Court granted liberty to the respondent/C. Thankarajan to purchase the share of the appellant for a sum of Rs.50,000/-. Aggrieved, the appellant is before this Court.

3. The main question of law raised in this appeal is whether the appellant, having not challenged the preliminary decree, may challenge the final decree. It is contended that the High Court could not have modified the preliminary decree. We find it difficult to appreciate this contention. No doubt, the preliminary decree was for partition by metes and bounds. But at the stage of final decree, the High Court, having regard to the peculiar facts of this case, addressed the question of impracticability of partitioning a small pathway which is around 6 feet wide by metes and bounds. The High Court has also referred to Section 2 of the Partition Act in that regard.

4. In the facts of this case and having regard to the provision under Section 2 of the Partition Act, the view taken by the High Court cannot be faulted.

5. However, we find that the amount fixed by the High Court i.e. Rs.50,000/- for the total share, in our view, as on date is too low. Therefore, in the fitness of things and in the interest of justice it would only be just and proper to direct the respondent to pay a further sum of Rs.1,00,000/- in addition to what the High Court has already fixed. Ordered accordingly.

6. The appeals are, accordingly, disposed of.
7. Pending applications, if any, shall stand disposed of.
8. There shall be no orders as to costs.