

PETITIONER:
RAJESWARI AMMA AND ANOTHER

Vs.

RESPONDENT:
JOSEPH AND ANOTHER

DATE OF JUDGMENT 10/01/1995

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
MANOHAR SUJATA V. (J)

CITATION:
1995 AIR 719 1995 SCC (2) 159
1995 SCALE (1)149

ACT:

HEADNOTE:

JUDGMENT:
ORDER

Admittedly, the execution petition was filed by Rajeshwari Amma, Sukumara Pillai and Neelamma Pillai, the legal representatives of the deceased Kolappa Pillai. After the execution petition was ordered by the Court of District Munsif at Kuzhithurai in EP No. 274 of 1981 in OS No. 14 of 1961 dated 12-8-1981, the respondents carried it in revision to the High Court. Therein only the deceased Kolappa Pillai, Rajeshwari Amma and Sukumara Pillai were impleaded as respondents omitting Neelamma Pillai. In other words, the order of the executing court directing delivery of possession which was executed and possession taken in favour of the three persons was challenged against only two persons. The order in favour of third person, namely, Neelamma Pillai became final. The execution petition being of the same property which is undivided between the decree-holders, the question emerges whether the High Court was right in allowing CRP No. 2747 of 1982 by order dated 1-7-1985 as against the unimpleaded respondent and whether that order also comes in aid to the appellants. On going through the record we find that there is some force in the arguments of Shri G. Viswanatha Iyer, the learned Senior Counsel for the appellants. Since the order of delivery of possession in favour of the decree-holders is common and inseparable and since it has become final as against Neelamma, the High Court was not right in setting aside the order as against the appellants. No doubt, as rightly pointed out by the learned counsel for the respondents this contention was not raised before the High Court. But being a question of law, it is open to be raised- and can be considered as the order is an inseparable one. Since the order against Neelamma had attained finality, we think that the High Court was not right in reversing the order of the executing court as against two respondents. The appeal is accordingly allowed. No costs.

JUDIS