

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.T.SANKARAN

THURSDAY, THE 5TH DAY OF FEBRUARY 2015/16TH MAGHA, 1936

CRP.No. 48 of 2013 (A)

AGAINST THE JUDGMENT IN CMA NO.24/2011 ON THE FILE OF THE DISTRICT COURT, KASARAGOD DATED 24-09-2012.

AGAINST THE ORDER IN I.A.NOS.276 & 277 OF 2011 IN OP 2/2008 ON THE FILE OF THE SUB COURT, KASARAGOD DATED 02-11-2011.

REVISION PETITIONERS/RESPONDENTS/RESPONDENTS:

1. SHAMEEMA,
W/O IQBAL, KIZHOOR HOUSE, KALANAD VILLAGE
CHANDRAGIRI POST-671 317, KASARAGOD TALUK.
2. K.M.ABDUL RAHIMAN,
S/O T.K. MUHAMMED, ADKATHBAIL, ADKATHBAIL VILLAGE,
KASARAGOD TALUK, ADKATHBAIL P.O.-671 121.
3. B.K.IBRAHIM,
S/O MUHAMMED HAJI, BELLIPADDY, MULIYAR VILLAGE,
KOTOOR POST-671 542, KASARAGOD TALUK.

BY ADVS. SRI.D.KRISHNA PRASAD
SMT.S.SANTHY

RESPONDENT/APPELLANT/PETITIONER:

ZUHARA,
D/O LAE M.P.ABDULLA, MASJID ROAD
CHENGALA VILLAGE AND POST-671 541
KASARAGOD TALUK.

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 05-02-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

I.A.NO.303/2013 IN C.R.P.NO.48/2013

DISMISSED

05/02/2015

SD/- **K.T.SANKARAN, JUDGE**

//TRUE COPY//

AHZ/

K.T.SANKARAN, J.

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Dated this the 5th day of February, 2015

ORDER

The respondent in the Revision (Zuhara) filed O.P.No.2 of 2008 on the file of the Sub Court, Kasaragod under Order XXXIII Rule 1 of the Code of Civil Procedure to file the suit as an indigent person. The suit was filed against her father Abdulla and the revision petitioners to set aside a document executed by the plaintiff in favour of the first defendant and another document which the first defendant executed in favour of defendants 2 to 4.

2. Pending O.P.No.2 of 2008, the first defendant died and his legal representatives were not impleaded. The trial court dismissed O.P.No.2 of 2008 for default. The plaintiff filed I.A.Nos.276 of 2011 and 277 of 2011 to restore O.P.No.2 of 2008 and to implead the legal representatives of the deceased first defendant. The trial court dismissed both the applications.

3. The plaintiff challenged the order of the trial court in

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C.M.A.No.24 of 2011 on the file of the District Court, Kasaragod. The Appellate Court allowed the appeal and set aside the order passed by the trial court. The Appellate Court restored O.P.No.2 of 2008 to file and the trial court was directed to dispose of O.P.No.2 of 2008 on the merits. The judgment in C.M.A.No.24 of 2011 is under challenge in this Civil Revision Petition.

4. The plaintiff filed O.P.No.2 of 2008 since she claimed to be an indigent person. When the first defendant died, it was the duty of the plaintiff to file application for impleading his legal representatives. The plaintiff herself was one of the legal representatives of the deceased first defendant. Even assuming that there was any abatement, it could be only as against the first defendant and not against defendants 2 to 4. The trial court was not justified in dismissing the suit on the ground of default only because the plaintiff failed to file an application for impleading the legal representatives of the deceased first defendant. The trial court dismissed the application for restoration on the ground that restoration cannot be had without impleading the legal representatives of the dead person. The application for

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impleading was dismissed on the ground that O.P.No.2 of 2008 was not restored. This stand adopted by the trial court was not justifiable. The Appellate Court corrected the same and rightly restored O.P.No.2 of 2008. There is no jurisdictional error or error of law warranting interference in the judgment passed by the Appellate Court.

The Revision lacks merits and it is dismissed.

(K.T.SANKARAN)
Judge

ahz/