

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

FRIDAY, THE 30TH DAY OF JANUARY 2015/10TH MAGHA, 1936

CRP.No. 29 of 2015

**AGAINST THE JUDGMENT IN CMA 66/2012 of IST ADDITIONAL DISTRICT COURT,
PALAKKAD DATED 18-09-2014**

REVISION PETITIONER(S)/APPELLANTS/DEFENDANTS:

1. LEKSHMI DEVI, D/O.YASODHAAMMA, AGED 54 YEARS
POOPULLY HOSUE, MENS HOSTEL ROAD, CHITTUR VILLAGE
CHITTUR TALUK.
2. P.VENUGOPALAN,
S/O.T.K.SETHUMADHAVAN NAIR, POOPPULLY HOUSE
AMBATTUPALAYAM, CHITTUR COLLEGE POST
CHITTUR VILLAGE, CHITTUR TALUK.
3. PRATEEP, AGED 21 YEARS,
S/O.PRABHAKARAN NAIR, NETHAJI ROAD, POLLACHI TOWN
POLLACHI TALUK, TAMIL NADU.
4. RESHMA, AGED 19 YEARS,
D/O.PRABHAKARAN NAIR, NETHAJI ROAD, POLLACHI TOWN
POLLACHI TALUK, TAMIL NADU.

**BY ADVS.SRI.S.SUDHEESHKAR
SRI.NIDHI BALACHANDRAN**

RESPONDENT(S):

1. LEKSHMI DEVI, D/O.GOPALAN NAIR, AGED 67 YEARS,
THYKKAD HOUSE, KAVARAMEDU, CHITTUR VILLAGE
CHITTUR TALUK-678901.
2. SANTHAKUMARI, AGED 60 YEARS,
D/O.GOPALAN NAIR, THYKKAD HOUSE, KAVARAMEDU
CHITTUR VILLAGE, CHITTUR TALUK-678901.

**THIS CIVIL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 30-01-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

PJ

P. BHAVADASAN, J.

C.R.P. No. 29 of 2015

Dated this the 30th day of January, 2015.

ORDER

Aggrieved by the judgment dated 18.9.2014 in C.M.A. 66 of 2012 before the District Court, Chittur, by which the court below confirmed the order dismissing I.A. 946 of 2011 and I.A. 948 of 2011 in O.S. 82 of 2009, the petitioners before the court below have come up in revision.

2. The petitioners were defendants in the suit. The suit was one for eviction. The suit was decreed ex parte on 10.12.2009. On motion by the petitioners herein, the ex parte decree was set aside by awarding costs of Rs.2,000/-. The suit was again listed for trial on 9.7.2010 and on that day, the suit was adjourned for evidence to 21.7.2010 and subsequently adjourned to 28.7.2010 and then to 31.7.2010. On that day also, like on the previous

occasions, the defence counsel reported no instructions and the result was that the suit was decreed ex parte on 10.8.2010. The petitioners then moved I.A. 946 of 2011 and 948 of 2011 to have the ex parte decree set aside and also to have the delay in filing the petition to set aside the decree condoned.

3. The ex parte decree was sought to be set aside on medical grounds. It is seen from the records that no evidence was adduced regarding the illness or regarding the delay or the reason for setting aside the ex parte decree.

4. The trial court observed that there was want of materials to show that there was sufficient cause to set aside the ex parte decree. It also noticed that the medical certificate produced only shows that the second petitioner before the court below complained of low back pain and there was nothing to show what had prevented the other

defendants from attending the court on that day. Further, there was no attempt to examine the doctor who treated the second petitioner before the court below to show that she was unable to move. The court below also noticed that on an earlier occasion when she was examined in support of the petition to set aside the ex parte decree, she had mentioned that she had no right over the property and she wants to continue her residence in that property as long as the case was pending. In the light of the above fact, the court below felt that there was no sufficient cause shown to condone the delay and accordingly, dismissed the delay petition and consequently the petition to set aside the ex parte decree also.

5. The matter was carried in appeal as C.M.A. 66 of 2012. The lower appellate court, on an independent evaluation of the materials concurred with the trial court and dismissed the appeal.

6. Learned counsel for the petitioners contended that the petitioners ought to have been given an opportunity to vindicate their grievances and the decree passed without hearing them cannot be sustained. It is also contended that the absence of the second petitioner before the court below was not willful and it was due to reasons beyond her control that she could not appear. It is contended that there was no reason to reject the medical certificate produced by her and the court below ought to have noticed that one of the defendants died during the pendency of the proceedings and that is the reason for the delay.

7. On going through the orders of the courts below, this Court finds little merit in the contention raised by the learned counsel for the petitioners. At the first instance, in support of the petition to set aside the ex parte decree, it appears that the second defendant was examined

as P.W.1 and in cross-examination she stated that she had no right over the property, but her only intention was to remain in possession. It is not discernible from the memorandum of revision before this Court also what exactly is the right claimed by the petitioners to remain in possession. They have been residing in the property for a long time. It is difficult to understand how she could acquire rights or continue to remain there.

8 Coming to the petition to set aside the ex parte decree on the second occasion, as rightly noticed by the court below, the medical certificate produced before the court below only shows that she complained of low back pain and there is nothing to show that she was precluded from appearing in court and contesting the matter. Further, it has to be noticed that the counsel appearing for the petitioners reported no instructions. Had the second petitioner before the court below been ill as contended by

her, she would have informed the same to her counsel and prayed for a short adjournment. That was also not done.

9. In the light of the fact that the second petitioner before the court below does not claim any independent right whatsoever over the property to remain in possession, this Court finds no reason to interfere with the order of the court below.

This Civil Revision Petition is without merits and it is accordingly dismissed.

sb.

P. BHAVADASAN,
JUDGE