

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

THURSDAY, THE 2ND DAY OF JULY 2015/11TH ASHADHA, 1937

FAO.No. 54 of 2012 ()

(AGAINST THE ORDER DATED 11/1/2012 IN I.A.NO.615/2011 IN O.S.NO
63/2005 ON THE FILE OF THE SUB COURT, KATTAPPANA)

APPELLANT(S)/DEFENDANTS:

1. CHANDRABABU, AGED 46 YEARS,
S/O.PUSHPANGATHAN, KIZHAKKEKUNATHU HOUSE,
PARATHODE VILLAGE, PUSHPAKANDAM P.O., IDUKKI DISTRICT.

2. SHEEBA, AGED 38 YEARS,
W/O.CHANDRABABU, KIZHAKKEKUNATHU HOUSE,
PARATHODE VILLAGE, PUSHPAKANDAM P.O., IDUKKI DISTRICT.

BY ADV. SRI.S. DILEEP (KALLAR)

RESPONDENT(S)/PLAINTIFF:

FEDERAL BANK LTD.,
NEDUMKANDAM BRANCH, NEDUMKANDAM, IDUKKI DISTRICT,
REP.BY ITS MANAGER.

R1 BY ADV. SRI.GEORGE VARGHESE (MANACHIRACKEL)
R1 BY ADV. SRI.P.R.MILTON

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON
02-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**THOTTATHIL B. RADHAKRISHNAN &
SUNIL THOMAS, JJ.**

F.A.O.No.54 of 2012

Dated this the 2nd day of July, 2015

JUDGMENT

Thottathil B. Radhakrishnan, J.

This appeal is filed by the defendants against an order by which application to set aside the ex parte decree after condoning the delay was dismissed.

2. Though the proceedings before the court below and this appeal are founded on the plea that what is sought to be set aside is an ex parte decree, the fact of the matter remains that the third defendant while tendering evidence in support of the application admitted the signature in the vakkalath nama and Ext.B1 consent statement given during trial. The decree that was passed is on the basis of that consent and hence, it is a consent decree and not ex parte decree. The court below was justified in dismissing the application. This appeal, therefore, fails.

In the result, the appeal is dismissed. If any amount is paid or deposited following the interim order dated 8/2/2012 of this Court, that will be given due credit to as against the amounts recoverable as per the decree.

Sd/-

THOTTATHIL B.RADHAKRISHNAN
Judge

Sd/-

SUNIL THOMAS
Judge

dpk

/true copy/ PS to Judge.

