

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE SUNIL THOMAS

MONDAY, THE 25TH DAY OF MAY 2015/4TH JYAISHTA, 1937

FAO.No. 65 of 2012 ()

APPELLANT(S)/PETITIONER/PLAINTIFF:

K.SURENDRAN,
AGED 54 YEARS, S/O.GOVINDAN NAMBIAR, KANDAMBATH HOUSE,
EZHOME AMSOM AND KOTILA DESOM, KANNUR TALUK.

BY ADVS.SRI.O.V.MANIPRASAD
SRI.SAJU J PANICKER

RESPONDENTS/RESPONDENT(S)/DEFENDANTS:

1. PUTHIYADATH VEETIL PUTHIYADAVAN KUNHIKANNAN,
AGED 68 YEARS, S/O.MADHAVI AMMA,
KUTTUR AMSOM AND DESOM, KUTTUR.P.O
MATHAMANGALAM BAZAR(VIA), KANNUR DISTRICT, PIN-670 306.
2. KODILAVAN DEVAKI,
AGED 64 YEARS, D/O.CHERIYAKUTTY,
KUTTUR AMSOM AND DESOM, KUTTUR.P.O,
MATHAMANGALAM BAZAR(VIA), KANNUR DISTRICT, PIN-670306.
3. PUTHIYAPURAYIL SATHYACHANDRAN,
AGED 46 YEARS, S/O.KANNAN, ANTHUR AMSOM AND DESOM,
PARASSINIKKADAVU.P.O, KANNUR DISTRICT, PIN-670 563.
4. KUNDATHIL MANOJ,
AGED 42 YEARS, S/O.OTHERAN, ANTHUR AMSOM AND DESOM,
PARASSINAKADAVU.P.O, KANNUR DISTRICT, PIN-670 563.
5. PUTHIYAPURAYIL ASOK KUMAR,
AGED 52 YEARS, S/O.BALAN, ANTHUR AMSOM AND DESOM,
PARASSINIKKADAVU.P.O, KANNUR DISTRICT, PIN-670 563.
6. KUNNUMAL PUTHIYAPURAYIL RANJITH,
AGED 40 YEARS, S/O.SAROJINI, ANTHUR AMSOM AND DESOM,
PARASSINIKKADAVU.P.O, KANNUR DISTRICT, PIN-670 563.
7. CHERIYANDI SAJU,
AGED 38 YEARS, S/O.NARAYANAN, PUTHIYANGOTT,
ERAMAM AMSOM AND MATHAMANGALAM DESOM,
MATHAMANGALAM BAZAR(PO), KANNUR DISTRICT, PIN-670 563.

R1,R2,R3-R6 BY ADV. SRIM.V.AMARESAN
ADV. SRI.V.N.RAMESAN NAMBISAN

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON
25-05-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

DG

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

F.A.O.No.65 of 2012

Dated this the 25th day of May, 2015

J U D G M E N T

Thottathil B.Radhakrishnan, J.

- 1.This appeal is against an order by which the court below dismissed an application for restoration of a suit for specific performance of a contract for sale of immovable property. That order also dismisses an application seeking condonation of delay of 490 days in filing the application to set aside the ex-parte decree.
- 2.We have heard the learned counsel for parties. We have perused the plaint and the written statement. The defendants admitted the suit agreement and the receipt of advance. The plea was largely on the basis of breach.
- 3.In so far as the application for condonation of delay and restoration of the suit are concerned, the plea was that the

plaintiff who is working as a Sub Inspector of Police in Kasargode District was engaged in his official duties and could not promptly attend to proceedings in Sub Court, Payyannur and instruct his advocate. This has been turned down by the court below, making reference to a couple of other applications submitted on this behalf seeking adjournment. We are of the view that interest of justice requires that the parties are given an opportunity for complete trial. We are also satisfied that sufficient cause was shown within the format of Section 5 of the Limitation Act and under Order IX Rule 9 of Code of Civil Procedure to restore the suit after condoning the delay in applying for such relief; however, on terms.

In the result, the impugned order is set aside and I.A.No.1164 of 2011 and I.A.No.1165 of 2011 in O.S.No.172 of 2004 of the Sub Court, Payyannur are allowed, restoring that suit to file on condition that the appellant pays the respondents an amount of ₹5,000/-(Rupees five thousand only) as costs through the counsel appearing for the respondents before this Court within a period of three weeks. Receipt/memo regarding such

payment shall be presented before the court below. Parties are directed to mark appearance before the court below on 28.7.2015. Appeal ordered accordingly. If the order for costs is not complied with, this appeal will stand dismissed automatically.

Sd/-
(THOTTATHIL B.RADHAKRISHNAN, JUDGE)

Sd/-
(SUNIL THOMAS, JUDGE)

//TRUE COPY//

P.A TO JUDGE

DG