

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

FRIDAY, THE 19TH DAY OF JUNE 2015/29TH JYAISHTA, 1937

FAO.No. 235 of 2012 ()

I.A.NOS.1030/2008 AND 1031/2008 IN O.S.NO.71/1998 OF THE SUB COURT,
SULTHAN BATHERY

APPELLANTS/PETITIONERS/PLAINTIFFS:

1. ILANJIKKAL VASUDEVAN AGED 55 YEARS
AGED 55 YEARS, S/O.KESAVAN, RESIDING AT VALLANCHERY
POOTHADI AMSOM DESOM, S.BATHERY TALE.

2. ILANJIKKAL RADHA, D/O.NARAYANAN,
AGED 60 YEARS, BHAVANI SADANATHIL HOUISE
RESIDING AT THUTHILERI, POOTHADI AMSOM DESOM
SULTHAN BATHERY TALUK.

3. SUNIL, AGED 26 YEARS,
S/O.VASUDEVAN, RESIDING AT VALLANCHERY
POOTHADI AMSOM DESOM, S.BATHERY TALUK.

BY ADVS.SRI.P.K.RAMKUMAR
SMT.ANITHA MENON

RESPONDENTS/RESPONDENTS/DEFENDANTS:

1. PUTHENVEETIL RAVEENDRAN, REP.BY LEGAL HEIRS RAJAMMA
AGED ABOUT 64 YEARS, W/O.PUTHENVEETIL RAVEENDRAN
RESIDING AT PUTHENVEETIL HOUSE, VALANCHERY, KOLERI P.O.
POOTHADY AMSOM DESOM
SULTHAN BATHERI TALUK - 673592.

2. SABURAJ, S/O.RAVEENDRAN,
AGED 41 YEARS, RESIDING AT PUTHANVEETIL HOUSE
KOLERI P.O., POOTHADY AMSOM DESOM
SULTHAN BATHERI TALUK - 673592.

3. SUDHEER, S/O.RAVEENDRAN, AGED 35 YEARS,
RESIDING AT PUTHANVEETIL HOUSE, KOLERI P.O.
POOTHADY AMSOM DESOM, SULTHAN BATHERI TALUK.

4. SUSHA, W/O.BIJU,
AGED 39 YEARS, ODAPPALLAM VALLUVADI P.O.
KIDANGAD AMSOM, SULTHAN BATHERI TALUK - 673592.

5. SULABHA, W/O.SHAJI,
AGED 37 YEARS, ALLUNGAL HOUSE, CHOOTHUPARA P.O.
POOTHADI AMSOM, SULTHAN BATHERI TALUK - 673592.

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON
19-06-2015, ALONG WITH FAO. 236/2012, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

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

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F.A.O.Nos.235 and 236 of 2012

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Dated this the 19th day of June, 2015

JUDGMENT

Thottathil B. Radhakrishnan, J.

These appeals are against the orders by which the court below refused to set aside the ex parte decree passed against the appellants and also refused to restore the suit filed by them to file.

2. Heard the learned counsel for the parties. We have gone through the materials on the basis of which the appellants pleaded before the court below that the applications were delayed on account of the illness of the second appellant and for other reasons attributed to the chronic illness that she had.

3. On hearing learned counsel for the parties, we see that the materials have been considered by the court below, however that, it appears to be a case where the applications could have been allowed atleast on terms, however that, the situation obtained by the grant of perpetual injunction in O.S.No.92 of 1999 and which is in force, as of now, ought to have been treated as an order of temporary injunction till the disposal of the suit.

In the result, these appeals are allowed vacating the impugned order and restoring O.S.No.71 of 1998 and also setting aside the ex parte decree in O.S.No.92 of 1999, both of the Sub Court, Sulthan Bathery, however that, the judgment and decree in O.S.No.92 of 1999 will be treated as an order of temporary injunction till the disposal of O.S.No.92 of 1999 following this judgment. This will also be on terms that the appellants pay the respondents (in both the appeals together) through their learned counsel appearing for them in these appeals, an amount of Rs.3,000/- (Rupees three thousand only) within a period of four weeks. Receipt/memo of such payment will be placed before the court below. Parties are directed to mark appearance before the court below on July 29th, 2015.

Sd/-

THOTTATHIL B. RADHAKRISHNAN
Judge

Sd/-

SUNIL THOMAS
Judge

Sbna