

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

WEDNESDAY, THE 24TH DAY OF JUNE 2015/3RD ASHADHA, 1937

FAO.No. 258 of 2012 ()

AGAINST THE ORDER/JUDGMENT IN I.A.NO.1126 OF 2012 IN OS
235/2006 of THE COURT OF I ADDL.SUB JUDGE, KOZHIKODE DATED
04.06.2012

APPELLANT(S)/PETITIONER/3RD DEFENDANT:

MUHAMMED BASHEER AGED 53 YEARS
S/O.BICHIBI, KURUTHOLAMUTTATH, NAGARAM AMSOM DESOM
KOZHIKODE TALUK, KOZHIKODE DISTRICT.

BY ADVS.SRI.R.SUDHISH
SMT.M.MANJU
SRI.K.R.RANJITH

RESPONDENT(S)/RESPONDENTS/PLAINTIFF & DEFENDANTS 1 & 4 TO 9:

1. K.M.ABDULLAKOYA, AGED 57 YEARS
S/O.IMBICHAYISSABI, KURUTHOLAMUTTATH
NAGARAM AMSOM DESOM, KOZHIKODE TALUK
KOZHIKODE-673001.
2. K.M.SAINABI
D/O.IMBICHAYISSABI, KURUTHOLAMUTTATH
NAGARAM AMSOM DESOM, KOZHIKODE TALUK
KOZHIKODE-673001.
3. AHAMMADKOYA, AGED 73 YEARS
KURUTHOLAMUTTATH, NAGARAM AMSOM DESOM,
KOZHIKODE TALUK
KOZHIKODE-673001.
4. HASANKOYA, AGED 63 YEARS
S/O.KUNHAHAMMAD KOYA, KURUTHOLAMUTTATH
NAGARAM AMSOM DESOM, KOZHIKODE TALUK
KOZHIKODE-673001.
5. YAKOOB, AGED 43 YEARS
S/O.MOOSAKOYA, KURUTHOLAMUTTATH,
NAGARAM AMSOM DESOM
KOZHIKODE TALUK, KOZHIKODE-673001.

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6. HAJISA, AGED 25 YEARS
D/O.ASMABI, KURUTHOLAMUTTATH,
NAGARAM AMSOM DESOM
KOZHIKODE TALUK, KOZHIKODE-673001.
7. AHAMMAD ABIL, AGED 15 YEARS
S/O.ASMABI
REPRESENTED BY HIS MOTHER AND GUARDIAN ASMABI
KURUTHOLAMUTTATH, NAGARAM AMSOM DESOM,
KOZHIKODE TALUK
KOZHIKODE-673001.

R1 BY ADV. SRI.K.M.FIROZ
R1 BY ADV. SMT.M.SHAJNA
R3 TO R7 BY ADV. SRI.A.N.PREMLAL

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY
HEARD ON 24-06-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

THOTTATHIL B.RADHAKRISHNAN &
SUNIL THOMAS, JJ.

.....
FAO No.258 of 2012
.....

Dated this the 24th day of June, 2015.

J U D G M E N T

Thottathil B.Radhakrishnan, J.

- 1.Third defendant in a suit for partition is the appellant. He challenges an order by which the court below has refused to set aside ex parte decree passed against him.
- 2.Heard.
- 3.While it may be true that the petitioner was earlier set ex parte and that ex parte decree was later set aside, that by itself was not a reason to consider whether the ex parte decree which is sought to be set aside through the petition from which this appeal arises ought to be allowed.
- 4.The present application was filed without any delay. The application was supported by a medical certificate. It may be true

that the Doctor was not examined. But, the uncontroverted statement in the affidavit along with the medical certificate ought to have been considered to allow the application, at least on terms.

In the result, this appeal is allowed setting aside the impugned order and also the ex parte decree on condition that the appellant pays to respondent/plaintiff, an amount of ₹2,500/- (Rupees two thousand and five hundred only) as costs within a period of two weeks through the counsel appearing for the respondent/plaintiff before this Court. The memo/receipt evidencing payment of such costs shall be presented before the court below. Parties are directed to mark appearance before the court below on 28.07.2015.

(THOTTATHIL B.RADHAKRISHNAN, JUDGE)

(SUNIL THOMAS, JUDGE)