

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

FRIDAY, THE 5TH DAY OF JUNE 2015/15TH JYAISHTA, 1937

FAO.No. 306 of 2012 ()

I.A.NO.1527/2011 IN O.S.120/2006 OF the SUB COURT, CHERTHALA DATED
21.07.2012

APPELLANT /PETITIONER/PLAINTIFF:

FR. LEENOSE
S/O.PANICKAVEETIL SEBASTIAN
MANAGING DIRECTOR AND PRESIDENT OF PANICKAVEETIL SIR
SEBASTIAN PUBLIC SCHOOL AND CHARITABLE SOCIETY
PANICKAVEETIL, PADINJATTUMKARA VADKKUM MURI
THURAVOOR NORTH VILLAGE, CHERTHALA TALUK
ALAPPUZHA DIST.

BY ADV. SRI.R.AZAD BABU

RESPONDENTS/RESPONDENTS/ DEFENDANTS:

1. N.T. JACOB
S/O.THOMAS, NEYYARAPPALLIL GARDENS
VAYALAR KIZHAKKU VILLAGE, CHERTHALA TALUK
ALAPPUZHA DIST.688536.

2. MANIYAPPAN
S/O.PADMANABHAN, KALATHIPARAMBIL, VAYALAR MURI
CHERTHALA TALUK, ALAPPUZHA DIST. 688536.

3. PONNAMMA
W/O.MANIYAPPAN, -DO- 688 536.

4. THE CATHOLIC SYRIAN BRANCH,
CHERTHALA REPRESENTED BY ITS MANAGER-688524.

R2, R3 BY ADV. SRI.R.S.KALKURA
R2, R3 BY ADV. SRI. M.S. KALESH
R1 BY ADV. SRI.T.JAYAKRISHNAN
R1 BY ADV. SMT.K.M.RASHMI (PARAVOOR)

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON
05-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

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F.A.O.No.306 of 2012

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Dated this the 5th day of June, 2015

JUDGMENT

Thottathil B. Radhakrishnan, J.

Heard.

2. This appeal is against an order by which the court below refused to restore to file a suit which was dismissed for default. The application for restoration was filed within the period prescribed, it is submitted.

3. Before the court below, the plaintiff who was then around 70 years of age tendered oral evidence. A medical certificate was produced. The doctor, who treated him and issued that certificate, was also examined.

4. It appears that there was a counter claim.

5. The certificate of the doctor shows that the plaintiff had a contusion on his right big toe and was advised rest for three days. We may also note in this juncture that the suit is on behalf of a charitable society which is represented by a priest who was said to be sick when the case was taken up for trial.

The mere fact that the plaintiff also tried to project a case that he was not aware of the counter claim ought not to have weighed against the application for restoration being allowed. We are satisfied that there are sufficient causes to have this appeal being allowed. This appeal is accordingly allowed setting aside the impugned order and allowing I.A.No.1527 of 2011 in O.S.No.120 of 2006, thereby restoring the suit to file. Parties will mark appearance before the court below on July 29, 2015.

Sd/-

THOTTATHIL B. RADHAKRISHNAN
Judge

Sd/-

SUNIL THOMAS
Judge

Sbna