

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&**

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

TUESDAY, THE 23RD DAY OF JUNE 2015/2ND ASHADHA, 1937

FAO.No. 352 of 2012 ()

**AGAINST THE ORDER/JUDGMENT IN P. O.P 10/2003 of I ADDL.SUB COURT, THRISSUR
DATED 27-06-2012**

APPELLANT(S)/PETITIONERS:

- 1. MINOR VIJAY,
AGED 12 YEARS, S/O.RAMANAN AND VIJAYALAKSHMY,
PALLATH HOUSE, CHITILAPPILLY DESOM,
CHITILAPPILLY VILLAGE, THRISSUR TALUK,
THRISSUR DISTRICT.**
- 2. RAMANAN, S/O.PALLATH VELUKUTTY, PALLATH HOUSE,
CHITILAPPILLY DESOM AND VILLAGE,
THRISSUR TALUK AND DISTRICT.**

BY ADV. SRI.K.A.SATHEESA BABU

RESPONDENT(S)/RESPONDENTS:

- 1. DR.LOUIS D.PARAKKAL,
DISTRICT HOSPITAL, THRISSUR - 680 001
(NOW WORKING AT VINCENT D & PAUL HOSPITAL
NEAR OLLUR CHURCH, OLLUR, THRISSUR).**
- 2. DR.FATHIMA BEEVI, ANESTHETIST, DISTRICT HOSPITAL, THRISSUR,
(NOW RESIDING AT CHANDRESARAS, KARIKKATH LANE
THRISSUR).**
- 3. DIRECTOR OF HEALTH SERVICES, GOVT. OF KERALA,
THIRUVANANTHAPURAM.**
- 4. KERALA STATE, REPRESENTED BY THE DISTRICT COLLECTOR**

**R1,R2 BY ADVS. SRI.P.SANTHOSH (PODUVAL)
SMT.R.RAJITHA**

R3,R4 BY SRI.P.P.PADMALAYAN, GOVERNMENT PLEADER

**THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON
23-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

DG

'CR'

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

F.A.O.No.352 of 2012

Dated this the 23rd day of June, 2015

J U D G M E N T

Thottathil B.Radhakrishnan, J.

- 1.This appeal arises from an order refusing to grant leave to sue as indigents. Plaintiffs are the appellants.
- 2.Heard learned counsel for the parties.
- 3.The 2nd plaintiff is the daughter of the first defendant and Smt.Vijayalakshmi who is no more. The suit in relation to which leave was sought to sue as indigents is one claiming damages for alleged medical negligence of the doctors who are defendants 1 and 2. They are doctors in Government service. The other defendants are the State Government and the Director of Health Services.
- 4.The appellants were found eligible to sue as indigent persons.

The application for leave to sue as indigents has been rejected on the ground that the proposed suit is barred by limitation. That finding is rendered on the basis of the respective dates of issuance and delivery of the notice under Section 80 of the Code of Civil Procedure, on the Government.

5. Article 113 of the Schedule to the Limitation Act prescribes a period of limitation to run from when the right to sue accrues. The phrases 'right to sue accrues', 'right to sue first accrues' and 'cause of action arises' are used in the different Articles of the Schedule to the Limitation Act. When different words or phrases are used in a statute, they have to be understood having regard to the context in which they are used. Unless differential indicators are intended, a legislation would not be made using different words and phrases, even if they are not defined as such in the 'dictionary code' or 'definition clause' of that statute. Therefore, those three phrases in the Limitation Act have to be understood and applied based on the totality of each Article which uses such word or phrase in the Limitation Act.

6. In so far as causes of actions within the territory of the State of Kerala are concerned, the provisions of the Kerala Torts (Miscellaneous Provisions) Act, 1976 have also to be reckoned. That is a unique legislation in the State of Kerala as noted by the erudite teacher of law; Prof.P.S.Achuthan Pillai. (See Law of Tort with Law of Statutory Compensation and Consumer Protection by Prof. P.S.Achuthan Pillai).

7. Looking at the pleadings of the plaintiffs, bearing the aforesaid in mind, we see that if at all there is a plea of limitation raised by the defendants, that issue would give rise to questions which have to be adjudicated as issues of fact or mixed questions of issues of facts and law. Unless such an issue is not an issue of law only, issue relating to limitation ought not to be decided as a preliminary issue in terms of Order XIV Rule 2(b). Therefore, an order rejecting plaint cannot be resorted to under Order VII Rule 11(d) in such a situation. So much so, an application to sue as indigent in such a situation in such a suit, cannot be rejected with reference to Order XXXIII Rule 5(f) of Civil Procedure Code. For the aforesaid reasons, the impugned order does not stand.

In the result, the impugned order is set aside and P.O.P.No.10 of 2003 of the Sub Court, Thrissur is allowed. Parties are directed to mark appearance before the court below on 30.9.2015. The court below will register the proceedings as a suit and proceed in accordance with law.

Sd/-
(THOTTATHIL B.RADHAKRISHNAN, JUDGE)

Sd/-
(SUNIL THOMAS, JUDGE)

//TRUE COPY//

P.A TO JUDGE

DG