

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

FRIDAY, THE 3RD DAY OF JULY 2015/12TH ASHADHA, 1937

FAO.No. 353 of 2012 ()

AGAINST THE ORDER IN I.A.6609/2011 & 6610/2011 IN I.A.2882/1999 IN OS
988/1992 of PRL.SUB COURT,THRISSUR DATED

APPELLANTS/PETITIONERS/RESPONDENTS 1,4 & 6 :

1. NARAYANI
W/O. LATE PARAYIL UNNI, KUNNATHUKARAYIL
OLLUKKARA VILLAGE, THRISSUR.

2. SUBASH
S/O. LATE PARAYIL UNNI, KUNNATHUKARAYIL
OLLUKKARA VILLAGE, THRISSUR.

3. SUJANAN
S/O. LATE PARAYIL UNNI, KUNNATHUKARAYIL
OLLUKKARA VILLAGE, THRISSUR.

BY ADV. SRI.DILIP J. AKKARA

RESPONDENTS/RESPONDENTS/PETITIONER, RESPONDENTS 2,3 & 5:

1. SUGUNAN
S/O. PARAYIL UNNI, KALATHODE DESOM, OLLUKKARA VILLAGE
THRISSUR-680655.

2. SURESH
S/O. PARAYIL UNNI, KUNNATHUKARAYIL, OLLUKKARA VILLAGE
THRISSUR-680655.

3. SUDHA
W/O. GOPINATHAN, KUNDIL HOUSE, VELLANIKKARA WEST
THRISSUR-680654.

4. SUNILKUMAR
S/O. PARAYIL UNNI, KUNNATHUKARAYIL, OLLUKKARA VILLAGE
THRISSUR-680655.

R3 BY ADV. SMT.P.A.SHEEJA

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON 03-07-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

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F.A.O.No.353 of 2012

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Dated this the 3rd day of July, 2015

JUDGMENT

Thottathil B. Radhakrishnan, J.

We have heard the learned counsel for the appellants quite in extenso.

2. This appeal is against a final decree. The plea projected in the final decree application, which stood with a delay of 3655 days, is that the appellants should be given a provision in the final decree to take water from a well which will be exclusively in an item that is to be allotted to another sharer.

3. Though at the first blush, the plea for potable water may appear to be appealing, on a deeper consideration, we are inclined to take a view that the said plea cannot be entertained and that it was rightly rejected by the court of first instance.

4. For one thing, there was no reason at all to condone the enormous delay. We are of the view that the materials on record clearly show that the enormous delay of ten years could not have been condoned and further, the matter taken up before the Executive Magistrate in terms of the Code of Criminal Procedure

also did not turn fruitful to the appellants.

5. More importantly, the eligibility to utilize a particular private well, when partible properties get partitioned, is to be established as a legal right, either absolute or in the nature of an easement and such right has to be claimed and got determined in the preliminary decree stage. No such claim and provision having been made at the preliminary stage, the final decree proceedings could not have been carried to that effect.

6. For all these reasons, this appeal is bound to fail.

In the result, this appeal is dismissed.

Sd/-
THOTTATHIL B. RADHAKRISHNAN
Judge

Sd/-
SUNIL THOMAS
Judge

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