

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

THURSDAY, THE 2ND DAY OF JULY 2015/11TH ASHADHA, 1937

FAO.No. 378 of 2012 ()

AGAINST THE ORDER IN IOP 1/2010 of PRINCIPAL SUB COURT,ERNAKULAM

APPELLANTS/PETITIONERS:

P.J.MARY AGED 70 YEARS
D/O.LATE JOSEPH, VELIYILPARAMBIL HOUSE
UDAYAMPEROOR P.O., MANAKUNNAM VILLAGE, ERNAKULAM.

BY ADVS.SRI.DINESH R.SHENOY
SRI.G.HARIKRISHNAN (TRIPUNITHURA)
SRI.R.V.RAHUL
SRI.CHERIAN SEBASTIAN

RESPONDENTS/RESPONDENTS:

1. JOB VARKEY, AGED 48 YEARS
S/O.VARKEY, POTTAYIL HOUSE, THIRUMARADY VILLAGE
NORTH MARADI P.O., MUVATTUPUZHA TALUK
ERNAKULAM DISTRICT 686673.

2. MARY BENJAMIN, AGED 50 YEARS
W/O.BENJAMIN, POTTAYIL HOUSE, NEAR KANIYAMPUZHA BRIDGE
EROOR, TRIPUNITHURA, ERNAKULAM-682306.

3. RANJITHMON K.R., AGED 36 YEARS
S/O.K.C.REJIMON, KALAPADAKKAL HOUSE, BUND ROAD
VTJ ENCLAVE, VI/472-1, MARADU P.O.
PIN 682304, ERNAKULAM.

4. K.R.LATHA, AGED 32 YEARS
W/O.PEETHAMBARAN, 50/1628, BLAVATH HOUSE
JANATHA ROAD, VYTILA, ERNAKULAM
CHN-682019.

5. RANI, AGED 46 YEARS
W/O.GOPI, PURETHEPPADI HOUSE, MARADU P.O.
KANAYANNOOR TALUK, PIN 682304.

6. FRANCIS SALES D'COSTA, AGED 46 YEARS
S/O.FRANCIS D'COSTA, ASTHAKODATHPARAMBIL HOUSE
BEAUFOT, MARADU DESOM, KANAYANNOOR TALUK
MARADU P.O., PION 682304.

R6 BY ADV. SRI.K.REGHU KOTTAPPURAM
R5 BY ADV. SRI.P.V.GEORGE (PUTHIYIDAM)
R4 BY ADV. SRI.N.RAGHURAJ
R4 BY ADV. SMT.K.AMMINIKUTTY
R3 BY ADV. SRI.V.PHILIP MATHEW
R2 BY ADV. SRI.S.EASWARAN

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON
02-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

"CR"

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

F.A.O. No.378 of 2012

Dated this the 2nd day of July, 2015

JUDGMENT

Thottathil B. Radhakrishnan, J.

Heard.

2. This appeal is against an order by which the court below refused to grant leave to the appellant to sue as an indigent.

3. The suit is one seeking a declaration impeaching a sale deed and also for consequential reliefs of recovery of possession, injunction etc. What has been found by the court below is that amounts are lying in fixed deposit. That amount is the consideration for the transaction which is impeached in the suit and, hence, a matter in dispute in the suit. We may also note that if the plaintiff were to withdraw that amount, that may be against her interest in prosecuting the suit as against the transaction which she impeaches. Therefore, that

amount cannot be reckoned to determine the income for the purpose of adjudicating an application under Order XXXIII Rule 1 CPC. Hence, the application filed by the appellant before the court below for leave to sue as an indigent was liable to be allowed.

In the result, this appeal is allowed setting aside the impugned order and allowing IOP.No.1 of 2010 of the Sub Court, Ernakulam. The court below shall number the suit and proceed with it in accordance with law. The parties are directed to mark appearance before the court below on 18.09.2015.

Sd/-

THOTTATHIL B.RADHAKRISHNAN
Judge

Sd/-

SUNIL THOMAS
Judge

dpk

/true copy/ PS to Judge.