

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. 385 of 2012 ()

(AGAINST THE ORDER DATED 31/7/2012 OF THE SUB COURT, KATTAPANA IN
I.A.NO.828/2011 IN O.S.NO.231/09)

APPELLANT(S)/PETITIONER & PLAINTIFF:

R. PALANIYANDY, AGED 64 YEARS,
S/O M. RAJAMANIPILLAI
NORHT CAR STREET UTHAMAPALAYAM TOWN,
UTHAMAPALAYAM TLAUK, THENI DISTRICT, TAMILNADU.

BY ADV. SRI.JACOB ABRAHAM

RESPONDENT(S)/RESPONDENTS AND DEFENDANTS:

1. P.C. CHACKO,
S/O CHACKO, PUTHUPARAMBIL HOUSE, PULIYANMALA KARA,
KATTAPPANA VILLAGE, UDAMBANCHOLA TALUK,
IDUKKI DISTRICT

2. BIJU OUSEPH,
S/O OUSEPH, MEMURIYIL HOUSE, PULIYANMALA KARA,
KATTAPPANA VILLAGE, UDUMBANCHOLA TALUK
IDUKKI DISTRICT

R1 BY ADV. SRI.A.C.DEVASIA

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

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

FAO. No. 385 of 2012

Dated this the 23rd day of June, 2015

JUDGMENT

Thottathil B. Radhakrishnan, J.

This appeal is against an order by which the court below refused to restore the suit to file.

2. Heard.

3. The suit was listed for trial on 6/8/2011. There was no sitting on that day and the case was adjourned to 18/11/2011. On that day, the plaintiff did not appear. He stated that he was laid up due to hypertension. It was stated that he was under treatment in a hospital. However, the suit was dismissed for non-prosecution. He placed Ext.A1 medical certificate and applied for restoration of the suit within time. The plaintiff gave evidence as PW1 in support of the application for restoration. However, the court below, took the view that Ext.A1 medical certificate cannot be relied on for want of certain entries regarding the IP number. We are of the view that uncontroverted statement in the application supported by the testimony of the plaintiff as witness, is sufficient to restore the suit to file. The court below ought not to have ignored the fact

that the suit is for a claim in relation to the property which is one for cancellation of document and declaration of title. Hence, this appeal is entitled to succeed.

In the result, this appeal is allowed setting aside the impugned order and allowing I.A.No.828/2011, thereby restoring to file O.S. No.231/2001 of Sub Court, Kattapana. No costs.

Sd/-
THOTTATHIL B.RADHAKRISHNAN
Judge

Sd/-
SUNIL THOMAS
Judge

dpk

/True copy/ PS to Judge.

