

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC  
&  
THE HONOURABLE SMT. JUSTICE P.V. ASHA

FRIDAY, THE 9TH DAY OF OCTOBER 2015/17TH ASWINA, 1937

FAO.No. 270 of 2006 ( )

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AGAINST THE ORDER IN I.A.NOS.1528/04 AND 1529/04 IN OS 51/2003 of SUB COURT,  
PAYYANNUR DATED 17-08-2006

APPELLANT(S)/PETITIONER/DEFENDANT NO.2::  
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ATTAPPATTU PENNAMMA @ MARY, W/O PETER,  
AGED 53 YEARS, ATTAPPATTU HOUSE, KANAKAKUNNU  
P.O. ARANG, NADUVIL AMSOM, DESOM  
TALIPARAMBA TALUK, KANNUR DISTRICT.

BY ADV. SRI.O.V.MANIPRASAD

RESPONDENT(S)/RESPONDENTS/PLAINTIFF & DEFENDANTS NO.1,3 TO 8:  
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1. ATTAPPATTU THOMAS, S/O.ANTONY  
AGED 57 YEARS, CHUZHALI AMSOM, DESOM  
KANNADIPPARA, PALERITHATTU, P.O. CHUZHALI  
TALIPARAMBA TALUK, KANNUR DISTRICT.
2. ATTAPPATTU KUTTYAMMA POULOSE, D/O.ANTONY  
AGED 55 YEARS, KARAKKUNNEL HOUSE, NADUVIL AMSOM  
VELLAD DESOM, P.O. VELLAD, TALIPARAMBA TALUK  
KANNUR DISTRICT.
3. ATTAPPATTU ACHAMMA JOHNNY, D/O.ANTONY,  
AGED 43 YEARS, PUZHAMATTATHIL HOUSE, ERUVESSI AMSOM  
DESOM, PAISAKKARI, P.O. ERUVESSY  
TALIPARAMBA TALUK, KANNUR DISTRICT.
4. ATTAPPATTU KURIAN, S/O. ANTONY,  
AGED 50 YEARS, ATTAPPATTU HOUSE, KANAKAKUNNU  
ARANG P.O., NADUVIL AMSOM, DESOM  
TALIPARAMBA TALUK, KANNUR DISTRICT.
5. ATTAPPATTU ANNAKUTTY ANTONY, D/O.ANTONY,  
AGED 48 YEARS, ATTAPPATTU HOUSE, KANAKAKUNNU  
P.O. ARANG, NADUVIL AMSOM, DESOM  
TALIPARAMBA TALUK, KANNUR DISTRICT.
6. ATTAPPATTU ELCY APPAN, D/O. ANTONY,  
AGED 47 YEARS, ATTAPPATTU HOUSE, KANAKAKUNNU  
P.O. ARANG, NADUVIL AMSOM, DESOM  
TALIPARAMBA TALUK, KANNUR DISTRICT.

7. ATTAPPATTU ROSAMMA, D/O. ANTONY,  
AGED 45 YEARS, THEKKATTIL HOUSE, AMERICANPARA  
P.O. ULIKKAL, NUCHIYAD AMSOM, DESOM  
TALIPARAMBA, TALUK, KANNUR DISTRICT.
8. ATTAPATTU JOSE ANTONY, S/O.ANTONY,  
AGED 43 YEARS, ATTAPPATTU HOUSE, KANAKAKUNNU  
P.O. ARANG, NADUVIL AMSOM, DESOM  
TALIPARAMBA TALUK, KANNUR DISTRICT.

R1 BY ADV. SRI.DENIZEN KOMATH  
R1 BY ADV. SRI.SHERRY J. THOMAS

THIS FIRST APPEAL FROM ORDERS HAVING COME UP FOR ADMISSION ON  
09-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ANTONY DOMINIC & P.V.ASHA, JJ.

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F.A.O.No.270 of 2006  
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Dated this the 9<sup>th</sup> day of October, 2015

JUDGMENT

Antony Dominic, J.

- 1.This appeal is filed against the order passed by the Sub Court, Payyannur in I.A.Nos.1528/04 and 1529/04 in O.S.No.51/03. By the said order, the trial court declined to the prayers of the appellant to condone the delay of 98 days in applying to set aside the ex parte decree.
- 2.We heard the learned counsel for the appellant and the learned counsel appearing for the respondents.
- 3.The suit was filed by the first respondent seeking partition of the plaint schedule property. In the suit, the appellant filed written statement disputing the claim of partibility of the property scheduled in the plaint. However, when the suit was listed for trial on 25.6.2004, the appellant was absent and her counsel reported no instructions. On that basis, an ex parte preliminary decree was passed. It was

subsequently that the appellant filed the interlocutory applications, in which, the impugned orders were passed by the trial court, whereby, her prayers for condonation of delay and for setting aside the ex parte decree were declined.

4. Reading of the order shows that the case of the appellant in the affidavits filed in support of the IAs was that she was under treatment for Arthrites at the Pariyaram Medical College and Ayurveda hospital. On that basis she stated that she could not be present on the day when the case was listed for trial. However, it has been found by the Sub Court that not even a scrap of paper supporting her plea that she was under treatment and it was therefore that she remained absent in court was produced by the appellant. This, therefore, shows that the appellant had not produced any satisfactory explanation to substantiate her prayer for condonation of delay and for setting aside the ex parte decree.

we do not find any illegality in the order passed by the sub court. Appeal fails and is accordingly dismissed.

Sd/-  
ANTONY DOMINIC, Judge.

Sd/-  
P.V.ASHA, Judge.

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PS to Judge