

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

FRIDAY, THE 20TH DAY OF NOVEMBER 2015/29TH KARTHIKA, 1937

FAO.No. 48 of 2015

(AGAINST THE ORDERS DATED 24.7.2014 IN IA NO.382/11 AND IA NO.383/11 IN O.S.NO.11/09
ON THE FILES OF SUB JUDGE, KATTAPPANA)

APPELLANT/PETITIONER/DEFENDANT NO.1:

SOOSAN ROOPAN, W/O ROPPAN JOSEPH, RESIDING AT
CHERIYAKAKKRANCHERY HOUSE, SOORYANELLY KARA,
CHINNAKKANAL VILLAGE, DEVIKULAM TALUK, IDUKKI DISTRICT.

BY ADVS.SRI.A.A.ZIYAD RAHMAN
SRI.LAL K.JOSEPH
SRI.V.S.SHIRAZ BAVA
SRI.JOSEPH KURIAN VALLAMATTAM

RESPONDENTS/PLAINTIFFS 1 TO 5 AND DEFENDANTS 2 TO 25:

1. ANI MICHALE (ANTHONY)
AGED 82 YEARS, W/O MICHALE, CHAMMINIYODATH HOUSE,
AMRA-30, MAMANGALAM, POONITHURA VILLAGE, ERNAKULAM.
2. MARY PAILY, W/O A.M.PAILY, AGED 77 YEARS,
AMBALATHUPARAMBIL, MANJUMMAL.P.O.
ELOOR VILLAGE, ERNAKULAM
3. MARY PAUL (LORD MARY), W/O PAUL
AGED 59 YEARS, THAIPARAMBIL HOUSE,
THEVARMADOM ROAD, VENNALA P O
COCHIN 28, ERNAKULAM VILLAGE, ERNAKULAM
4. JACOB C.C, CHERIYAKARAKKANSHERIL
(KUNNUPURATH) PUTHANANGADI, KOTTAYAM VILLAGE, KOTTAYAM.
5. PAUL LAURANCE.P.M. (KUNJUMON)
PARAMBALOTH HOUSE, KSN MENON ROAD,
ERNAKULAM VILLAGE, KOCHI 16.
6. SOOSAN ROOPAN, W/O ROOPAN JOSEPH, **(DELETED)**
HOUSE NO.56, CHERIYAKAKKRANCHERY MARGATTOR,
KOLANCHERY, KUNNATHUNAD TALUK, ERNAKULAM.
*(R6 IS DELETED FROM THE PARTY ARRAY AND THE RESPONDENT
NOS.7 TO 33 RENUMBERED AS RESPONDENT NOS.6 TO 32 VIDE
ORDER DATED 12.11.2015 IN IA 1237/15)*
7. VIPIN JOSEPH, ROOPAN JOSEPH,
HOUSE NO.56, CHERIYAKAKKRANCHERRY MANGATTOR,
KOLANCHERY, KUNNATHUNADU TALUK, ERNAKULAM.

8. VIJIL JOSEPH, ROOPAN JOSEPH,
HOUSE NO.56, CHERIYAKAKKRANCHERRY MANGATTOR,
KOLANCHERY, KUNNATHUNADU TALUK, ERNAKULAM.
9. LORANZ PAUL, AGED ABOUT 58 YEARS,
CHERIYAKAKKRANCHERY, ELOOR EAST, MEPPRIKUNNU,
UDAYOGAMANDAL PO, ERNAKULAM.
10. BABY JOSEPH, AGED ABOUT 69 YEARS,
S/O JOSEPH, CHERIYAKAKKRANCHERRY,
MANNUMMAL.O.P.O, ELOOR VILLAGE, ERNAKULAM
11. DELSON S/O JOSEPH, AGED ABOUT 48 YEARS, CHERIYAKAKKRANCHERY,
MANNUMMAL PO, ELOOR VILLAGE, ERNAKULAM.
12. GLADSON, S/O JOSEPH, AGED ABOUT 44 YEARS, CHERIYAKAKKRANCHERY,
MANNUMMAL.P.O, ELOOR VILLAGE, ERNAKULAM.
13. PREMSON S/O JOSEPH, AGED ABOUT 36 YEARS,
CHERIYAKAKKRANCHERY, MANNUMMAL P O, ELOOR VILLAGE, ERNAKULAM.
14. PAULY ISSAC JOB (CLARA), AGED ABOUT 73 YEARS,
PARACKAL HOUSE, ASHAMANNOOR VILLAGE,
CHERUKUNNAM, KUNNATHUNADU TALUK,
ERNAKULAM, KOCHI 32.
15. ANGUS JOSEPH W/O JOSEPH, **(DIED)**
MUDUVATHIL HOUSE, THAMANAM PO
KOCHI 32, ERNAKULAM.
16. MARY JOSEPH, KOOTIPARAMBIL HOUSE, (RESPONDENT/PLAINTIFFS
FATHERMANUEL ROAD, FMRA 118, 1 TO 5 AND DEFENDANTS 2
KATHIRKADAVU, POONITHURA VILLAGE, TO 25)
KOCHI 17, ERNAKULAM.
17. JESMIN RARAPHEL, THITTAYIL HOUSE,
AGED 55 YEARS, KARNAKODAM, POONITHURA VILLAGE
THAMMANAM PO, KOCHI-32, ERNAKULAM.
18. ALPHONSA JOY, AGED ABOUT 60 YEARS,
KOMAROTH HOUSE, KARNAKODAM POONITHURA
VILLAGE, THAMMANAM PO, KOCHI 32.
19. CELIN, SAINT ANTS CONVENT, KOTTAPURAM, KODUNGALLOOR
20. SOSAMMA MATHEW, KZHUTHADIYIL HOUSE,
AMALIGIRI PO, AMALIGIRI, KOTTAYAM.
21. ELISABETH JOSE, PARAKKALAYIL HOUSE, IRAVIMANALAM PO,
MUTTUCHIRA, MANJOOR VILLAGE, KOTTAYAM.
22. VALSAMMA CC, ARACKAL HOUSE, PUTHENKAVU PO, CHENGANNOOR,
CHENGANNOOR VILLAGE, ALAPPUZHA NOW AT LAKSHMI NIVAS,
NEAR ROAMN CATHOLIC CHURCH, KEEZHCHERIMEL, CHENGANNOOR 689 4121.

23. MARYKUTTYAC.C., PRAKASH BAHVAN,
VELLOOR PO, VALLOOR VILLAGE, KOTTAYAM
24. CHACKO LAWRENCE, CHERIYACRAKRANCHERY, UDHAYANAPURAM,
VAIKOM, UDHAYANAPURAM VILLAGE, KOTTAYAM
25. JOSEPH PM, ABOUT 70 YEARS, PARAMBOLATH MUNDAMVELI PO
PALLURUTHY VILLAGE, KOCHI 682 507, ERNAKULAM.
26. JULIET JOHN, AGED ABOUT 64 YEARS,
CHAKKALACKAL HOUSE, SOUTH CHITTOOR,
CHERANALLOOR VILLAGE, KOCHI 27, ERNAKULAM.
27. ALPONSA MATHEW, AGED ABOUT 64 YEARS,
CHAKKALACKAL HOUSE, SOUTH CHITTOOR,
CHERANALLOOR VILLAGE, KOCHI 27, ERNAKULAM.
28. TRESA XAVIER AGED ABOUT 61 YEARS, PALLATHU HOUSE,
MANUEL LANE, THYKODAM, VYTTILA PO, POONITHURA VILLAGE, KOCHI 27.
29. LIZA VARGHESE, AGED ABOUT 50 YEARS, KURISHUPARAMBIL HOUSE,
PAZNITHODUPALAM (CHOICE ROAD), PALLURUTHY, EDKOCHI VILLAGE, KOCHI 6.
30. FLORY PATHROSE, ROSEVILLA 15/172,
PANDALLOOR MAIN ROAD, NELLIYALALAM VILLAGE
PANDALLOOR TALUK, NILGIRI DISTRICT, TAMILNADU 643 233.

ADDL. R31 PAUL JOSEPH, MUDUVATHIL HOUSE, NEAR G-MART
THAMANAM P O, KOCHI 32, ERNAKULAM

ADDL.R32 JOSEPH VARGHESE, MUDUVATHIL HOUSE, NEAR G MART
THAMANAM PO, KOCHI 32, ERNAKULAM

ADDL.R33 MARY JOY, THACHIL HOUSE, NEAR G MART,
THAMANAM PO, KOCHI 32, ERNAKULAM.
*(ADDITIONAL RESPONDENTS 31 TO 33 ARE IMPEADED BEING THE LEGAL
HEIRS OF THE DECEASED R15 VIDE ORDER DATED 12.11.15 IN IA 617/15.)*

R1,R2,R3,R5 & 14 BY ADV.SRI.V.S.AFSAL KHAN

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON 20-11-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ANTONY DOMINIC & P.V.ASHA, JJ.

F.A.O.No.48 of 2015

Dated this the 20th day of November, 2015

JUDGMENT

Antony Dominic, J.

Heard the counsel for the appellant and the learned counsel appearing for the respondents.

2. This appeal is filed by the defendant in O.S.11/09 on the file of the Sub Court, Kattappana challenging the order dated 24th July 2014 whereby the trial court has dismissed I.A.Nos.382/11 and 383/11. O.S.11/09 was filed by respondents 1 to 5 seeking partition of the plaint schedule properties. While the appellant contested the suit, some of the defendants in the suit supported the plaintiffs. Suffice it to say, that an ex parte preliminary decree was passed on 31.8.2010. The appellant thereupon filed I.A.Nos.382/11 and 383/11 seeking to set aside the ex parte preliminary decree and to condone 195 days delay in applying for the same. By order dated 27.5.2014, I.A.383/11 was allowed and the delay was directed to be condoned subject to the appellant paying cost of Rs.2500/-. However, the cost was not paid as ordered by the court and therefore, the impugned orders were passed on 24.7.2014 dismissing I.As. It is aggrieved by these orders, the appeal is filed.

3. It is also seen that subsequent to the passing of the ex parte preliminary decree, proceedings for passing the final decree progressed and it is the common case of the parties that as of now the Commissioner has completed the measurement and the matter now stands for the final report of the Commissioner. As we have already stated, the reason for passing the impugned orders is the failure of the appellant in complying with the order passed by the Sub Court requiring payment of Rs.2,500 as cost. In this appeal, the Advocate appearing for the first respondent before the court below has confessed that the default occurred on account of his omission in intimating the matter to the appellant. It is settled law that if any default has occurred on the part of the counsel, the litigant should not be made to suffer. Keeping that principle in mind, we are satisfied that the appellant should be given an opportunity to contest the suit on merits. However, it is now revealed that respondents 1 to 5, plaintiffs in the suit, have incurred substantial expenditure in the final decree proceedings and it is submitted that towards the commission, batta and expenses itself they have to spend Rs.46,500/-.

4. Taking note of this, we set aside the order passed by the Sub Court, Kattappana in dismissing I.A.Nos.382/11 and 383/11 subject to the

appellant paying an amount of Rs.50,000/- to respondents 1 to 5 within two weeks from today, in such event, order passed in I.As.382/11 and 383/11 will stand set aside and the preliminary decree passed will also stand set aside. Sub Court, Kattappana will thereupon proceed to dispose of O.S.11/09 in accordance with law.

5. Having regard to the fact that the suit was instituted way back in 2009, it is ordered that the Sub Court shall expedite the trial and dispose of the matter as early as possible, at any rate, within ten months from the date of receipt of a copy of this judgment.

6. It is also made clear that in the event the appellant fails to pay the amount as ordered by this court, the order impugned in this appeal will stand confirmed.

This appeal is disposed of accordingly.

Sd/-
ANTONY DOMINIC
JUDGE

Sd/-
P.V.ASHA
JUDGE

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