

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

THURSDAY, THE 23RD DAY OF JULY 2015/1ST SRAVANA, 1937

FAO.No. 65 of 2015 ()

(AGAINST ORDER DATED 20.01.2015 IN I.A.NOS.61 OF 2015 AND 62
OF 2015 IN O.S.NO.185 OF 2012 OF SUB COURT, KARUNAGAPPALLY)

APPELLANT(S)/PETITIONER/DEFENDANT:

HARIKUMAR, AGESD 45 YEARS,
S/O. PAVIZHASANAN, SHOBHA GARDENS
PADANAYARKULANGARA NORTH
KARUNAGAPPALLY VILLAGE FROM ANANDA BHAVANAM,
ADINADU THEKKU, KULASEKHARAPURAM VILLAGE
KARUNAGAPPALLY TALUK, KOLLAM.

BY ADVS.SRI.VINOY VARGHESE KALLUMMOOTTILL
SMT.S.S.SAI LAKSHMI

RESPONDENT(S) :/COUNTER PETITIONER/PLAINTIFF

KANNAN REDDIAR
S/O.MUTHUSWAMY REDDIAR, RESIDING AT RANI NIVAS
KALLUMMOODU, KAYAMKULAM, ALAPPUZHA - 688 001.

BY ADV. SRI.BASANT BALAJI (CAVEATOR)

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY
HEARD ON 23-07-2015, ALONG WITH OPC. 1729/2015, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:

THOTTATHIL B.RADHAKRISHNAN &
SUNIL THOMAS, JJ.

.....
FAO No.65 of 2015
and
OP(C) No.1729 of 2015
.....
Dated this the 23rd day of July, 2015.

J U D G M E N T

Thottathil B.Radhakrishnan, J.

1. Heard.

2. These matters are filed by the defendant in O.S.No.185 of 2012 of Sub Court, Karunagappally. That is a suit for settlement of accounts, recovery of possession and injunction. There is a connected suit as O.S.No.604 of 2012, which is filed by the defendant in O.S.No.185 of 2012. That is for specific performance of an agreement on the basis of which O.S.No.185 of 2012 is filed, as if it is a contract for sale.

3. Both the suits appear to have had different bumpy rides inasmuch as O.S. No.185 of 2012 was decreed twice ex parte and

O.S.No.604 of 2012 was dismissed twice for default. On both those occasions, the ex parte decrees were set aside and the dismissed suit was restored, either by the same court or by the appellate court. Thereafter, for the third time, O.S.No.604 of 2012 was dismissed for default and O.S.No.185 of 2012 was decreed ex parte. The default dismissal of O.S.No.604 of 2012 has been set aside, thereby restoring that suit. However, the ex parte decree in O.S.No.185 of 2012 stands in view of dismissal of the application to set aside that ex parte decree by reason of non-payment of costs of ₹25,000/- ordered as condition for setting aside the ex parte decree. This leads to FAO No.65 of 2015. During the pendency of the matter before the court below, an application was filed as I.A.No.1309 of 2014 in O.S.No.185 of 2012 for joint trial of both the suits. That was dismissed by the learned trial Judge on the premise that a counter claim could have been filed rather than a fresh suit. That leads to the captioned original petition under Article 227 of the Constitution of India.

4. Having heard the learned counsel for the parties and having particular regard to the fact that O.S.No.604 of 2012 stands restored to file, it is necessary to secure ends of justice by setting aside the ex parte decree in O.S.No.185 of 2012 and ordering joint trial of both the suits after setting aside the order impugned in OP(C) No.1729 of 2015. All these will have to be only on terms and also by treating that, at least insofar as the petitioner / appellant before us is concerned, this shall be the last opportunity for the trial on merits.

5. In the result,

- (i) FAO No.65 of 2015 is allowed setting aside the order impugned therein. Resultantly, I.A.Nos.61 and 62 of 2015 in O.S.No.185 of 2012 on the file of Sub Court, Karunagappally will stand allowed and the ex parte decree passed in the suit will stand set aside.
- (ii) OP(C) No.1729 of 2015 is allowed setting aside the order

impugned therein and ordering joint trial of O.S.Nos.185 of 2012 and 604 of 2012 on the file of Sub Court, Karunagappally.

- (iii) Both the aforesaid directions and orders will be on the firm condition that the appellant in FAO No.65 of 2015, who is the petitioner in OP(C) No.1729 of 2015, pays an amount of ₹10,000/- (Rupees ten thousand only) as costs to the respondent in both the matters together through his learned counsel appearing before this Court, within a period of two weeks from today.
- (iv) Parties are directed to mark appearance before the court below on 06.08.2015.

We record the submission that O.S.No.604 of 2012 is listed for trial on 06.08.2015. If it is found necessary by that Court, that suit may be removed from the special list to enable appropriate

joint trial with due pre-trial steps. However, the court below will consider expeditious disposal of both the suits, if possible, before the end of 2015.

Sd/-
(THOTTATHIL B.RADHAKRISHNAN, JUDGE)

Sd/-
(SUNIL THOMAS, JUDGE)

The direction in the judgment dated 23/07/2015 in F.A.O 65/2015 and O.P(C) No.1729/2015 is complied with by the appellant in F.A.O 65/2015 (the petitioner in OP(C) 1729/2015) within the stipulated time, vide memo dated 29/07/2015.

Sd/-
Registrar (Judicial)

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