

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC

&

THE HONOURABLE SMT. JUSTICE P.V.ASHA

TUESDAY, THE 8TH DAY OF DECEMBER 2015/17TH AGRAHAYANA, 1937

FAO.No. 76 of 2015 ()

(Against common order dt.14.1.2015 in I.A No.1502/2014 & 1503/2014 in
O.S.No.139/2012 of the Sub Court, Kochi

APPELLANT/PETITIONER/DEFENDANTS 1,3,4 &5:

1. SANTHAMMA JOSEPH, AGED 56 YEARS
W/O. LATE V.M. JOISEPH, VATTAMAKKAL HOUSE, MOOLAMKUZHI
THOPPUMPADY PO, KOCHI.

2. SHAMA JOSEPH, AGED 34 YEARS
D/O. LATE, V.M. JOISEPH. VATTAMAKKAL HOUSE
MOOLAMKUZHI, THOPPUMPADY PO, KOCHI

3. PAULSON JOSEPH, AGED 31 YEARS
D/O. LATE V.M. JOISEPH, VATTAMAKKAL HOUSE, MOOLAMKUZHI
THOPPUMPADY PO, KOCHI.

4. LULU, AGED 28 YEARS
D/O. LATE V.M.JOISEPH, VATTAMAKKAL HOUSE, MOOLAMKUZHI
THOPPUMPADY PO, KOCHI.

BY ADVS.SRI.P.CHANDRASEKHAR
SRI.S.PRASANTH
SRI.SOORAJ T.ELENJICKAL
SRI.P.A.MOHAMMED SHAH
SMT.UMA
SRI.T.S.SARATH
SMT.P.M.MAZNA MANSOOR

RESPONDENT(S)/RESPONDENTS/PLAINTIFFS/2ND DEFENDANT:

1. P.H.KHALID, AGED 52 YEARS
S/O. LATE HASSAN, THEVANCHERRY PARAMBIL, PALLURUTHY
KOCHI-6.

2. N.H. SAIMUDHIN, AGED 42 YEARS
S/O. LATE HASSAN, THEVANCHERRY PARAMBIL HOUSE
PALLURUTHY, KOCHI-6.

3. SHIMMY JOSEPH, AGED 36 YEARS
S/O.LATE JOSEPH, NEAR CULTS CENTRE, PERUMPADAPPU
PALLURUTHY, KOCHI-6.

R1&2 BY ADV. SRI.D.SREEKUMAR

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON
08-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ANTONY DOMINIC & P.V ASHA, JJ.

F.A.O No.76 of 2015

Dated this the 8th day of December, 2015

JUDGMENT

Antony Dominic, J.

Heard the learned counsel for the appellants and the learned counsel appearing for respondents 1 and 2. The notice addressed to the 3rd respondent has been returned unclaimed and therefore it is deemed as served. Respondents 1 and 2 filed O.S No.139 of 2012 against the appellants and the 3rd respondent for recovery of money. The suit was decreed exparte. Thereafter I.A Nos.1502 of 2014 and 1503 of 2014 were filed by the appellants, seeking to set aside the exparte decree and to condone 58 days' delay in filing the application to set aside the exparte decree. By order dated 4.1.2015, these applications were dismissed. It is this order, which is under challenge before us.

2. Having heard the learned counsel for both sides, we are inclined to think that, though the reasons which are assigned

by the appellants for condonation of delay and setting aside the decree are not so convincing, still having regard to the fact that the suit involves substantial contentions and also substantial amount is sought to be recovered, the appellants should be given an opportunity to contest the suit on merit.

With that in mind, we set aside the order impugned subject to the condition that the appellants pay cost of Rs.10,000/- (Rupees Ten thousand only) to respondents 1 and 2. The cost shall be paid within ten days from today and on such payment, the suit - O.S.No.139 of 2012 will stand restored to the files of the Sub Court, Kochi, which shall dispose of the suit, as expeditiously as possible and in accordance with law.

The appeal is disposed of as above.

Sd/-

ANTONY DOMINIC
Judge

Sd/-

P.VASHA
Judge

rtr/

/true copy/

P.S to Judge

The appellants have paid Rs.10,000/- (Rupees Ten thousand only) as costs to the respondents 1 and 2 within the time limit in compliance of the direction in the judgment dated 8.12.2015 in F.A.O No.76/2015, vide memo c.f. 5552/2015 dated 17.12.2015.

Sd/-
Registrar (Judicial)