

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

FRIDAY, THE 4TH DAY OF DECEMBER 2015/13TH AGRAHAYANA, 1937

FAO.No. 104 of 2015 ()

AGAINST THE ORDER/JUDGMENT IN IA.NOS.3754/14 & 3755/14 IN OS 539/1999 of
PRL.SUB COURT, THRISSUR DATED 23-03-2015

APPELLANT(S)/PETITIONERS 1 TO 10 & 12 TO 15:

1. PRAKASHAN, AGED 58 YEARS
S/O.KARAYIL DEVAKY, RESIDING AT KARAYIL HOUSE
PERINGOTTUKARA DESOM, KIZHAKKUMMURI VILLAGE
THRISSUR TALUK, THRISSUR DISTRICT
2. VASANTHA, AGED 52 YEARS
W/O.KRISHNAN, RESIDING AT VELLANCHERY HOUSE
EDATHIRUTHY DESOM, EDATHIRUTHY VILLAGE
KODUNGALLUR TALUK, THRISSUR DISTRICT
3. PRATHAPAN, AGED 54 YEARS
S/O.KARAYIL DEVAKY, KAZHIMBRAM DESOM, VALAPPAD VILLAGE
CHAVAKKAD TALUK, THRISSUR DISTRICT
4. BABU, AGED 50 YEARS
S/O.KARAYIL DEVAKY, KAZHIMBRAM DESOM, VALAPPAD VILLAGE
CHAVAKKAD TALUK, THRISSUR DISTRICT
5. THARA, AGED 48 YEARS
W/O.SOMAN, KAKKANATT HOUSE, ALAPPATT VILLAGE
THRISSUR TALUK THRISSUR DISTRICT
6. SHAJI, AGED 44 YEARS
S/O.KARAYIL DEVAKY, KAZHIMBRAM DESOM, VALAPPAD VILLAGE
CHAVAKKAD TALUK, THRISSUR DISTRICT
7. SHEELA, AGED 46 YEARS
W/O.SASHIDHARAN, ERANEZHATH HOUSE, CHERKARA POST
THALIKULAM VILLAGE, CHAVAKKAD TALUK, THRISSUR DISTRICT
8. SHEEBA, AGED 42 YEARS
W/O.RANADEV, RESIDING AT KAREPARAMBIL HOUSE
ALAPPAT PORATHUR, ALAPPAT VILLAGE, THRISSUR TALUK
THRISSUR DISTRICT
9. MANI, AGED 55 YEARS
W/O.PEETHAMBRAN, KARAYIL HOUSE, CHENTRAPPINNI DESOM
CHENTRAPPINNI VILLAGE, KODUNGALLUR TALUK
THRISSUR DISTRICT

10. BEJOY, AGED 37 YEARS
S/O. PEETHAMBRAN, KARAYIL HOUSE, CHENTRAPPINI DESOM
CHENTRAPPINI VILLAGE, KODUNGALLUR TALUK
THRISSUR DISTRICT
11. GIREESH, AGED 31 YEARS
S/O. PEETHAMBRAN, KARAYIL HOUSE, CHENTRAPPINI DESOM
CHENTRAPPINI VILLAGE, KODUNGALLUR TALUK
THRISSUR DISTRICT
12. SUNITHA, AGED 50 YEARS
W/O. LATE LAL, KARAYIL HOUSE, C/O. SASI
ERANEZHATH HOUSE, CHERKARA POST, THALIKULAM VILLAGE
CHAVAKKAD TALUK, THRISSUR DISTRICT
13. SREEDEVI, AGED 28 YEARS
W/O. LATE LAL, KARAYIL HOUSE, C/O. SASI
ERANEZHATH HOUSE, CHERKARA POST, THALIKULAM VILLAGE
CHAVAKKAD TALUK, THRISSUR DISTRICT
14. SUSHITHA AGED 26 YEARS
W/O. LATE LAL, KARAYIL HOUSE, C/O. SASI
ERANEZHATH HOUSE, CHERKARA POST, THALIKULAM VILLAGE
CHAVAKKAD TALUK, THRISSUR DISTRICT

BY ADVS. SRI. T. K. AJITH KUMAR
SRI. K. T. SIDHIQ

RESPONDENT(S)/RESPONDENT & 11TH PETITIONER:

1. SUDEVAN, AGED 58 YEARS
S/O. KESAVAN, RESIDING AT NEDIYIRUPPIL HOUSE
KAZHIMBRAM DESOM, VALAPPAD VILLAGE, CHAVAKKAD TALUK
THRISSUR, PIN 680568
 2. HAREESH, AGED 31 YEARS
W/O. PEETHAMBRAN, KARAYIL HOUSE, CHENTRAPPINI DESOM
CHENTRAPPINI VILLAGE, KODUNGALLUR TALUK
THRISSUR DISTRICT, PIN 680687
- R1 BY ADV. SRI. N. K. UNNIKRIISHNAN
R1 BY ADV. SRI. S. RAJEEV
R1 BY ADV. SRI. K. K. DHEERENDRAKRISHNAN
R1 BY ADV. SRI. V. VINAY
R1 BY ADV. SRI. N. U. HARIKRISHNA
R2 BY ADV. SMT. M. A. JINSA MOL

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON
04-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ANTONY DOMINIC & P.V.ASHA, JJ.

F.A.O.No.104 of 2015

Dated this the 4th day of December, 2015

JUDGMENT

Antony Dominic, J.

1. This appeal is filed by petitioners 1 to 10 and 12 to 15 in I.A.Nos.3754/14 and 3755/14 in O.S.539/99 on the file of the Principal Sub Court, Thrissur. O.S.539/99 was filed by the first respondent herein praying for a decree for specific performance of an agreement executed between the original sole defendant and the plaintiff. The suit was decreed ex parte on 10.12.2012. It was thereafter that the IAs in question were filed by the petitioners therein, seeking to set aside the ex parte decree and to condone the delay in applying for the same. By the impugned order, the court below dismissed the applications. It is this order which is under challenge before us.

2. In so far as I.A.3755/14 whereby condonation of delay was sought for is concerned, the order itself shows that on the date when the matter was heard, the parties were absent. Though in the memorandum of appeal, this statement in the order is described to

be incorrect, there is absolutely no material for us to conclude otherwise. We also take note of the fact that neither the order nor the memorandum of appeal contain any finding or averment indicating the extent of delay that was sought to be condoned. In other words, the order itself shows that the 17th defendant, who is presumed to have filed affidavit in support of the petitioner, had knowledge of the decree long before the application was made and she received information about the decree from the 4th defendant in the suit. It is despite that knowledge, she left the station to join her daughters and made application on 30.8.2013. All these show that it was the laches and negligence of the parties which led to the delay and the ex parte decree. We are not satisfied that the court below has committed any illegality in rejecting I.A.3755/14 and consequently, I.A.3754/14.

Appeal fails and is accordingly dismissed.

Sd/-
ANTONY DOMINIC, Judge.

Sd/-
P.V.ASHA, Judge.

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PS to Judge