

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

FRIDAY, THE 30TH DAY OF OCTOBER 2015/8TH KARTHIKA, 1937

FAO.No. 229 of 2015 ()

ORDER DATED 19.6.2015 IN IA.NOS.3446/14 & 3447/14 IN OS.1626/11 OF
PRINCIPAL SUB COURT, THRISSUR

APPELLANT(S)/PETITIONER/RESPONDENT:-

SHAMSHUDHEEN HAJI, AGED 45 YEARS
S/O.SAIDALLY, ERAVU VEETIL, VENGITANGU AMSOM
DESOM, CHAVAKKAD TALUK
REPRESENTED BY ITS POWER OF ATTORNEY HOLDER, NIMESH
AGED 37 YEARS, S/O.SOMAN, PARADI HOUSE
KOORKANCHERY DESOM & VILLAGE, THRISSUR DISTRICT.

BY ADVS.SRI.PRADHAKRISHNAN (1)
SRI.MADHU RADHAKRISHNAN

RESPONDENT(S)/RESPONDENTS/PLAINTIFFS:-

1. FATHIMA, AGED 54 YEARS
W/O.LATE MUSLIM VEETIL KASIM, GURUVAYOOR AMSOM
PALAYOOR DESOM, CHAVAKKAD TALUK, PIN - 680 101.
2. JASEERAKALI MON, AGED 37 YEARS
W/O.A.P.ALI MON, ARAKKA VEETIL HOUSE, ETS ROAD
HARITHA NAGAR, VADANAPPILLY - 680 614.
3. SAREENA GAFOOR, AGED 32 YEARS
W/O.ABDUL GAFOOR, VALIYAKATH HOUSE, P.O.VALAPPAD
FASNA HARIS, 25 YEARS, ARKKA VEETIL HOUSE
680 567.
4. FASBA HARIS, 25 YEARS
W/O.HARIS, ARKKA VEETIL HOUSE, GANESAMANGALAM
P.O.VADANAPPILLY, PIN - 680 614.

THIS FIRST APPEAL FROM ORDERS HAVING COME UP FOR ADMISSION ON
30-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ANTONY DOMINIC & P.V.ASHA, JJ.

F.A.O.No.229 of 2015

Dated this the 30th day of October, 2015

JUDGMENT

Antony Dominic, J.

1.Appellant is the defendant in O.S.1626/11 on the file of the Principal Sub Court, Thrissur. In the suit, the appellant did not appear or contest and as a result, the suit was decreed ex parte on 31.10.2012. Long thereafter, the appellant filed I.A.Nos.3446/14 and 3447/14 seeking to set aside the ex parte decree and to condone the delay in applying for the same. By the common order passed on 19.6.2015, these applications were dismissed by the Sub Court. It is aggrieved by this order, this appeal is filed.

2.We heard learned counsel for the appellant and considered the submissions made.

3.The case of the appellant is that at the time when the suit was instituted and thereafter, he was working abroad and that he came to know about the decree only on 17.6.2014 when he went to his village. It is on that basis that he made the application seeking condonation of delay and to set aside the ex parte decree.

4.However, reading of paragraph 7 of the impugned order shows that even though the applications filed by the appellant were posted for his evidence, he did not adduce any evidence to substantiate the averments in the petition. He did not also produce any material to show that either he was abroad or that he was unaware of the pendency of the case. The court has also taken note of the fact that not only summons was served on the appellant but also before setting him ex parte, notice was taken by substituted service. In such circumstances, the sub court has rightly concluded that it was for the appellant to explain his alleged ignorance of the pendency of the proceedings and his absence in the country which disabled him to contest the suit. Having not done so, the court below cannot be faulted for the view it has taken in the impugned order and therefore, we are not inclined to interfere with the same.

Appeal fails and is accordingly dismissed.

Sd/-
ANTONY DOMINIC, Judge.

Sd/-
P.V.ASHA, Judge.

kkb.

/True copy/

PS to Judge