

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE SMT. JUSTICE P.VASHA

WEDNESDAY, THE 2ND DAY OF DECEMBER 2015/11TH AGRAHAYANA, 1937

F.A.O.No. 257 of 2015

(AGAINST THE COMMON ORDER DATED 28TH JULY, 2015 IN I.A.NO.790/15 IN O.S.583/12
ON THE FILE OF THE SUB COURT, KARUNAGAPPALLY)

APPELLANT/PETITIONER/DEFENDANT NO.2:

AJITHKUMAR AGED 30 YEARS
S/O. THANKAPPAN, KARUTHALA VADAKKATHIL, HOUSE NO. 268
WARD NO.10, NADUVILE MURI, KUNNATHOOR PANCHAYATH
KUNNATHOOR TALUK & VILLAGE
KOLLAM DISTRICT - 690 540.

BY ADVS.SRI.P.B.KRISHNAN
SRI.P.M.NEELAKANDAN
SRI.P.B.SUBRAMANYAN
SRI.SABU GEORGE
SRI.S.NITHIN (ANCHAL)
SRI.K.P.ANIL KUMAR (SASTHAMCOTTA)

RESPONDENTS/PLAINTIFF & DEFENDANTS NO.1 & 3 TO 6:

1. JOY KUTTY, S/O. GEE VARGHESE, SUNIL COLLAGE, HOUSE NO. 284
WARD NO.12, KUNNATHUR MURI, KUNNATHOOR PANCHAYATH
KUNNATHOOR TALUK, KOLLAM DISTRICT - 690 540.
2. AMMINI, W/O. THANKAPPAN, KARUTHALA VADAKKATHIL, HOUSE NO. 268
WARD NO. 10, NADUVILE MURI, KUNNATHOOR VILLAGE & TALUK
KOLLAM DISTRICT - 690 540.
3. RENJITHKUMAR, S/O. THANKAPPAN, KARUTHALA VADAKKATHIL, HOUSE NO. 268
WARD NO. 10, NADUVILE MURI, KUNNATHOOR VILLAGE & TALUK
KOLLAM DISTRICT - 690 540.
4. SARASWATHY, W/O. CHELLAPPAN, KARUTHALA VADAKKATHIL, HOUSE NO. 252
WARD NO.10, NADUVILE MURI, KUNNATHOOR VILLAGE & TALUK
KOLLAM DISTRICT - 690 540.
5. BIJU, S/O. CHELLAPPAN, KARUTHALA VADAKKATHIL, HOUSE NO. 252
WARD NO.10, NADUVILE MURI, KUNNATHOOR VILLAGE & TALUK
KOLLAM DISTRICT - 690 540.
6. AJI, S/O. CHELLAPPAN, KARUTHALA VADAKKATHIL, HOUSE NO. 252
WARD NO. 10, NADUVILA MURI, KUNNATHOOR VILLAGE
KOLLAM - 690 540.

THIS FIRST APPEAL FROM ORDERS HAVING COME UP FOR ADMISSION ON
02-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ANTONY DOMINIC & P.V.ASHA, JJ.

FA.O.No.257 of 2015

Dated this the 2nd day of December, 2015

JUDGMENT

Antony Dominic, J.

This appeal is filed by the second defendant in O.S.583/12 on the file of the Sub Court, Karungappally. The suit for specific performance was filed by the first respondent, in which the appellant herein was defendant No.2. Though a written statement was filed by the defendants on 8.2.2011, due to want of representation, they were set ex parte on 15.1.2014 and an ex parte decree was passed on 28.1.2014. It was to set aside the ex parte decree and to condone delay in applying for the same that I.A.Nos.790 and 791 of 2015 were filed by the appellant. These applications were dismissed by the court below as per order dated 28th July 2015. It is challenging this order, the appeal is filed.

2. We heard the Senior Counsel for the appellant and considered the submissions made.

3. The undisputed facts as disclosed in the order under appeal shows that the ex parte decree was pronounced on 28.1.2014 and thereafter E.P.60/14 was filed by the decree holder. In the execution petition, notice was served on the appellant in February 2015 and this is

evident from Ext.P1. However, he did not bother to appear and was therefore set ex parte in the execution petition. Thereafter, in E.A.93/15 filed by the decree holder for delivery of the property, notice was again served on the appellant on 13.5.2015 and he did not bother to appear before the court. It is despite all these notices that the I.As. in which the impugned order was passed, were filed on 6.7.2015 contending that the petitioner was away at Madurai and therefore could not appear or contest the suit.

4. Having regard to the fact that in the suit, execution petition and in E.A.93/15, the appellant had received notice from the court itself show that it is because of his negligence and careless attitude that the ex parte decree was passed. Secondly, knowledge of the pendency of the proceedings also belie the claim of the appellant that the delay of 493 days in filing the applications to set aside the ex parte decree was not willful.

We do not find any reason to interfere with the order impugned. Appeal fails and it is dismissed accordingly.

Sd/- **ANTONY DOMINIC**
JUDGE

Sd/- **P.V.ASHA**
JUDGE