

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

MONDAY, THE 20TH DAY OF JULY 2015/29TH ASHADHA, 1937

FAO.No. 89 of 2011

**AGAINST THE ORDER IN I.A.NO.1857/2008 IN A.S.NO.95/2007 (R.P) OF THE SUB
COURT, ATTINGAL DATED 09.10.2009**

APPELLANT(S)/PETITIONERS/PLAINTIFFS :

- 1. SARALA DEVI, W/O.GOPINATHAN,
AGED 57 YEARS, SOORYA GAYATHRI, MAMOM DESOM,
KIZHUVILAM VILLAGE.**
- 2. G.S.ANUMOD, S/O.GOPINATHAN,
AGED 30 YEARS, SOORYA GAYATHRI, MAMOM DESOM,
KIZHUVILAM VILLAGE.**
- 3. G.CHITHRANATHA, D/O.SARALA,
AGED 27 YEARS, SOORYA GAYATHRI, MAMOM DESOM,
KIZHUVILAM VILLAGE.**

BY ADV. SRI.M.DINESH

RESPONDENT(S)/COUNTER PETITIONERS/DEFENDANTS:

- 1. INDIRA, W/O.RAVEENDRAN,
AGED 54 YEARS, KATTAKKALIL VEEDU, ALSO KNOWN AS
THEKKEVILA VEEDU, OOMAN PALLIKKARA DESOM,
PAZHAYAKUNNUMEL VILLAGE, KILIMANOOR.(P.O),
TRIVANDRUM-695 134.**
- 2. MINI, D/O.RAVEENDRAN,
AGED 29 YEARS, KATTAKKALIL VEEDU, ALSO KNOWN AS
THEKKEVILA VEEDU, OOMAN PALLIKKARA DESOM,
PAZHAYAKUNNUMEL VILLAGE, KILIMANOOR.(P.O),
TRIVANDRUM-695 134.**
- 3. MEERA, D/O.RAVEENDRAN,
AGED 27 YEARS, KATTAKKALIL VEEDU, ALSO KNOWN AS
THEKKEVILA VEEDU, OOMAN PALLIKKARA DESOM,
PAZHAYAKUNNUMEL VILLAGE, KILIMANOOR.(P.O),
TRIVANDRUM-695 134.**

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4. MAYA, D/O.RAVEENDRAN,
AGED 24 YEARS, KATTAKKALIL VEEDU, ALSO KNOWN AS
THEKKEVILA VEEDU, OOMAM PALLIKKARA DESOM,
PAZHAYAKUNNUMEL VILLAGE, KILIMANOOR.(P.O),
TRIVANDRUM-695 134.

* 5. SALIM, S/O.SALI, AGED 39 YEARS,
GOLDEN VILLA, FROM SAFEER MANZIL, (P.O) CHITTALAZHIKAM,
OOMAM PALLIKKARA, TRIVANDRUM-695 024.

6. SALINA, W/O.SALIM,
GOLDEN VILLA, FROM SAFEER MANZIL, (P.O) CHITTALAZHIKAM,
OOMAM PALLIKKARA, TRIVANDRUM-695 024.

*** ADDITIONAL R7 & R8 IMPEADED**

7. SURUMY, AGED 17 YEARS, D/O.LATE SALIM,
GOLDEN VILLA, FROM SAFEER MANZIL,
CHITTALAZHIKAM, OOMAM PALLIKKARA- 695 001.

8. SUMMIYA, AGED 17 YEARS, D/O.LATE SALIM,
GOLDEN VILLA, FROM SAFEER MANZIL,
CHITTALAZHIKAM, OOMAM PALLIKKARA- 695 001.

*** ADDITIONAL RESPONDENTS 7 AND 8 ARE IMPEADED BEING THE LEGAL
HEIRS OF THE DECEASED RESPONDENT 5 VIDE ORDER DATED 16.07.2015 IN
I.A.NO.363 OF 2012.**

R1 TO R4 BY ADV. SRI.J.JAYAKUMAR
R6 TO R8 BY ADVS. SRI.P.A.AHAMMED
SRI.THOUFEEK AHAMED

**THIS FIRST APPEAL FROM ORDERS HAVING COME UP FOR ADMISSION
ON 20-07-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' ANNEXURES :

- ANNEXURE A1: TRUE COPY OF THE JUDGMENT IN A.S.NO.95/2007 OF
OF THE SUB COURT, ATTINGAL.
- ANNEXURE A2: TRUE COPY OF THE I.A.NO.1857/2008 FILED BEFORE
THE SUB COURT, ATTINGAL.
- ANNEXURE A3: TRUE COPY OF THE CERTIFIED COPY OF THE ORDER IN
I.A.NO.1857/2008 IN A.S.NO.95/2007 (R.P) OF THE SUB
COURT, ATTINGAL DATED 09.10.2009.
- ANNEXURE A4: TRUE COPY OF THE I.A.NO.2147/2009 FILED BEFORE
THE SUB COURT, ATTINGAL.
- ANNEXURE A5: TRUE COPY OF THE CERTIFIED COPY OF THE ORDER
DATED 07.08.2010 IN I.A.NO.2147/2009 OF THE SUB COURT,
ATTINGAL.

RESPONDENT(S)' ANNEXURES :

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

P.B.SURESH KUMAR, J.

F.A.O. No.89 of 2011

Dated this the 20th day of July, 2015

JUDGMENT

The order on I.A.No.1857 of 2008 in A.S.No.95 of 2007 on the file of the Sub Court, Attingal, is under challenge in this appeal. The appellants are the plaintiffs in O.S.No.399 of 2003 on the file of the Sub Court, Attingal.

2. The suit referred to above was one for declaration of title, fixation of boundaries and recovery of possession. The suit was dismissed on 28.2.2007. The plaintiffs challenged the decision of the trial court in A.S.No.95 of 2007. On 21.10.2008, when the appeal came up for hearing, it was noticed that the appellants had not taken steps to serve notice of the appeal on the respondents.

Consequently, the appeal was dismissed for default. Thereupon, the appellant preferred I.A.No.1857 of 2008, invoking Order 41 Rule 19 of the Code of Civil Procedure, to restore the appeal to file. On 9.10.2009, when I.A.No.1857 of 2008 came up for hearing, there was no representation for the appellants. The court also noticed that the appellants had not cured the defect noted in the application. Consequently, I.A.No.1857 of 2008 was dismissed for default. This appeal is filed challenging the said order passed by the appellate court.

3. Heard the learned counsel for the appellants.

4. Though the appellants are not able to furnish satisfactory explanation for having not taken steps to serve notice of the appeal on the respondents and having not cured the defect noted on I.A.No.1857 of 2008, I am of the view that since the valuable rights claimed by the plaintiffs over the suit property are at stake in the appeal, they need to be given an opportunity to cure the defect noted in

I.A.No.1857 of 2008.

5. In the result, the order on I.A.No.1857 of 2008 dated 9.10.2009 is set aside and the said interlocutory application is restored to file. The parties are directed to appear before the court below on 10.8.2015. The appellants shall cure the defect noted in I.A.No.1857 of 2008 within a week thereafter.

The appeal is allowed as above.

P.B.SURESH KUMAR, JUDGE.

smm