

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE SUNIL THOMAS**

WEDNESDAY, THE 1ST DAY OF JULY 2015/10TH ASHADHA, 1937

FAO.No. 153 of 2014 ()

APPELLANT(S)/PETITIONERS/PLAINTIFFS :

- 1. MARY BABY, AGED 50 YEARS
W/O. BABY, HOUSE NO.XIV/443 A, MALEKKUDY HOUSE
IYMURI, KOOVAPPADY VILLAGE, KOOVAPPADY PANCHAYATH
KUNNATHUNADU TALUK.**
- * 2. BABY, AGED 50 YEARS
S/O. OUSEPH, HOUSE NO.XIV/443 A, MALEKKUDY HOUSE
IYMURI, KOOVAPPADY VILLAGE, KOOVAPPADY PANCHAYATH
KUNNATHUNADU TALUK, PERINGALA KARA. * (DIED)**

ADDL. APPELLANTS 3 TO 5

- 3. SANDHYA BABY, W/O VARGHESE, AGED 28 YEARS,
KACHAPILLY, HOUSE, BHAVANA NAGAR,
ANGAMALY P.O., ERNAKULAM**
- 4. SURYA BABY, W/O SANAL, AGED 26 YEARS, D/O BABY
REPRESENTED THROUGH POWER OF ATTORNEY HOLDER
MARY BABY, W/O LATE BABY, M.O.,
MALEKKUDY HOUSE, IRINGOLE P.O
PATTAL, PERUMBAVOOR, ERNAKULAM DISTRICT**
- 5. SANDYA BABY, AGED 18 YEARS, D/O LATE BABY M.O.
MELAKKUDY HOUSE, IRINGOLE P.O.,
PATTAL, PERUMBAVOOR, ERNAKULAM DISTRICT**

**(LRS OF DECEASED 2ND APPELLANT ARE IMPEADED AS ADDL.
APPELLANTS 3 TO 5 VIDE ORDER DATED 4.3.2015 IN IA NO.224/15)**

**BY ADVS.SRI.PAUL K.VARGHESE
SMT.A.A.GEETHA**

RESPONDENT(S)/RESPONDENTS/DEFENDANTS :

- 1. PAUL, AGED 55 YEARS,
S/O. VARGHESE, CHAMAKKATTU HOUSE, THURUTHY P.O.
PRALIYEKADU, VENGOOR WEST VILLAGE, PIN-653 545.**

2. KURIACHAN, AGED 55 YEARS
S/O. VARGHESE, KATTARUKUDI, RAYAMANGALAM KARA
RAYAMANGALAM VILLAGE, KUNNATHUNADU TALUK, PIN-653 565.
3. OUSEPHKUTTY, AGED 74 YEARS
S/O. DEVASSY, MANIYANCHERRY HOUSE, AYMURIKARA
KOOVAPPADY VILLAGE, PERUMBAVOOR-683 544.

R3 BY ADV. SRI.P.THOMAS GEEVERGHESE

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON
01-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

VS

**THOTTATHIL B. RADHAKRISHNAN
& SUNIL THOMAS, JJ.**

F.A.O.No.153 of 2014

Dated this the 1st day of July, 2015

JUDGMENT

Thottathil B.Radhakrishnan, J.

This is an appeal against an order by which the court below rejected an application for leave to sue as indigents as regards payment of balance court fee. The order of rejection was made on the ground that the petitioners seeking such reliefs, did not present themselves before the Chief Ministerial Officer, in terms of Order XXXIII Rule 1A of Code of Civil Procedure.

2. During the pendency of this appeal, the second appellant, who is the husband of the first appellant, died. His children have been brought on record as additional appellants. Obviously therefore, there has to be a *de novo* consideration of any request for leave to continue the suit as indigent persons. Similarly, the right of the first appellant to continue the suit without paying balance court fee has also to be considered. We think that it is appropriate for us to leave

open the issue as to whether personal appearance before the Chief Ministerial Officer was required to be effected in a matter relating to payment of balance court fee at the time of the institution of the litigation, which alone appears to be what is contemplated in Order XXXIII Rule 1 of C.P.C. We are of the view that the first appellant is entitled to have a reconsideration of that issue at the answer reported in the first instance along with application of the other additional appellants who may join the suit as additional plaintiffs.

In the result, the impugned order is set aside and the matter is remitted back to the court below for consideration in the light of what is stated above. Appeal ordered accordingly. Parties are directed to mark appearance before the court below on 25.11.2015.

**THOTTATHIL B. RADHAKRISHNAN
JUDGE**

**SUNIL THOMAS
JUDGE**

VS