

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

THURSDAY, THE 21ST DAY OF MAY 2015/31ST VAISAKHA, 1937

FAO.No. 198 of 2014 ()

AGAINST THE ORDER IN I.A.7/2012 IN A.S.259/2008 of THE II ADDL.
DISTRICT COURT, PALAKKAD DATED 18-03-2014

APPELLANT/PETITIONER/ APPELLANT:

VARGHESE, AGED 56 YEARS
S/O KOLADI MATHAI, FARMER
RESIDING AT MARATHAKODE VILLAGE, KIDANGOOR AMSOM
CHERAMANAYANGADU, THALAPPILLY TALUK
PALAKKADU DISTRICT

BY ADV. SRI.JOHN JOSEPH (ROY)

RESPONDENTS/RESPONDENTS/ RESPONDENTS:

1. RIYAS BABU,
S/O MUHAMMAD, CHAKKANTHARA, MUDAPPALLUR
ALATHUR TALUK, PALAKKAD DISTRICT

2. SOWRA UMMA,
W/O MUHAMMAD, CHAKKANTHARA, MUDAPPALLUR
ALATHUR TALUK, PALAKKAD DISTRICT

3. SHAJAHAN,
S/O MUHAMMAD, CHAKKANTHARA, MUDAPPALLUR
ALATHUR TALUK, PALAKKAD DISTRICT

4. ABDHUL NAIR,
S/O MUHAMMAD, CHAKKANTHARA, MUDAPPALLUR
ALATHUR TALUK, PALAKKAD DISTRICT

5. SHAJITHA,
D/O MUHAMMAD, CHAKKANTHARA, MUDAPPALLUR
ALATHUR TALUK, PALAKKAD DISTRICT

R1 & 5 BY ADV. SRI.SAJAN VARGHEESE K.

R1 & 5 BY ADV. SRI.LIJU. M.P

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON
21.05.2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

F.A.O. No. 198 OF 2014

Dated this the 21st day of May, 2015

JUDGMENT

Thottathil B. Radhakrishnan, J.

Heard the learned counsel for the parties.

2. This appeal is against an order refusing to set aside the dismissal of the appeal for default. The application for restoration has been dismissed holding that sufficient cause has not been shown.

3. The appellant contested the suit for partition on the plea that he had purchased the suit property. He had filed the appeal since the trial court had decreed the suit against him. The application to set aside the dismissal of the appeal for default was filed within the time prescribed by law. The ground was that an elderly advocate, who was appearing for the appellant, could reach the court only a bit late and the application for restoration was duly filed.

4. We have considered the rival submissions and the fact that the respondents had not objected to the restoration as is

seen from the impugned order itself. On the totality of the facts and circumstances, we are of the view that this is an eminently fit case in which the court below ought to have restored the appeal to file. The impugned order is set aside. Consequently, I.A. No.7/2012 in A.S. No.259/2008 of the District Court, Palakkad will stand allowed. Thereby, that appeal will stand restored and shall be listed for final hearing by that court. Parties are directed to mark appearance before the court below on 26/6/2015.

The appeal ordered accordingly.

Sd/-

THOTTATHIL B. RADHAKRISHNAN
Judge

Sd/-

SUNIL THOMAS
Judge

dpk

/True copy/

PS to Judge.

