

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

WEDNESDAY, THE 24TH DAY OF JUNE 2015/3RD ASHADHA, 1937

FAO.No. 315 of 2014 ()

AGAINST the ORDER IN I.A.NO.392/14 IN O.S.NO.178/06 OF THE SUB
COURT, KOCHI DATED 19.08.2014

APPELLANTS/PETITIONER/DEFENDANTS NO. 4 AND 5:

1. K.K.SATHYAPALAN AGED 53 YEARS
S/O.KUNJAN, KADAVIL PARAMBIL VEEDU, PERUMBADAPPU
KOCHI - 682 006.

2. M.V.MURUKAN AGED 48 YEARS
S/O.VELAYUDHAN, OORALAKKAMASSERY HOUSE, PERUMPADAPPU
KOCHI - 682 006.

BY ADVS.SRI.P.MARTIN JOSE
SRI.THOMAS P.KURUVILLA
SRI.P.PRIJITH

RESPONDENT/PLAINTIFF/RESPONDENT:

ANASTHASIA PJ.
POOVANKERI HOUSE, VADUTHALA, ERNAKULAM - 682 023.

R1 BY ADV. SRI.V.PREMCHAND

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON
24-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

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F.A.O.No.315 of 2014

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Dated this the 24th day of June, 2015

JUDGMENT

Sunil Thomas, J.

This appeal arises from the order in I.A.No.392 of 2014 in O.S.No.178 of 2006 of the Sub Court, Kochi. Appellants/Additional defendants 4 and 5 are aggrieved by the rejection of their application to set aside the ex parte decree.

2. According to the appellants/defendants 4 and 5, the above suit for fixation of boundary was listed for evidence and trial to 01.01.2014. Defendants 4 and 5 were under the impression that since an application for joint trial of the present case with O.S.No.146 of 2008 was pending, the case was not likely to be taken up for trial. Hence, they did not appear on the date of trial and they were set ex parte. Ultimately, ex parte decree was passed. Claiming that they did not get time to get ready for the trial, they sought for setting aside the ex parte decree.

3. The above application was opposed by the respondent/plaintiff. The court below by the impugned order dismissed the application which is assailed in this appeal.

4. Heard and examined the records.

5. It is seen that defendants 4 and 5 were impleaded in the present suit on 02.01.2012. It is also on record that I.A.No.531 of 2013 was filed by the defendants herein for joint trial of the present case with O.S.No.146 of 2008. The case of the defendants is that they were under the impression that the above application for joint trial would be taken for consideration on the listed day and hence, they did not get ready for trial.

6. However, the above interlocutory application stood dismissed by order dated 04.10.2013. There is no reason as to why they should not know about the dismissal of the application. Though they have set up a contention that the dismissal of the interlocutory application was not reflected in the A diary, copy of the A diary is not forthcoming. Further the above, interlocutory application was dismissed on 04.10.2013, the date on which the case was listed for trial. Necessarily, there should not have been an apprehension, since without disposing the application for joint trial, normally the Court would not have listed the matter for trial. Even otherwise, there were sufficient time preceding the listed day, during which the defendants 4 and 5 could have got ready.

7. However, though there appears to be latches on the part of the defendants, still, we are inclined to grant one last opportunity to them to contest the suit on merits. Hence, for the purpose of granting one more opportunity to participate in the trial and to contest the suit on merits, we are inclined to set aside the impugned order and to order remand of the case subject to terms.

In the result, this appeal will stand allowed, the impugned order is set aside and I.A.No.392 of 2014 stands allowed, subject to the appellants paying a sum of Rs.2,000/- (Rupees two thousand only) to the learned counsel for the contesting respondent/plaintiff herein within a period of ten days from the date of this judgment. Memo/receipt evidencing payment to the counsel shall be produced before the court below. Both the parties shall mark their attendance before the court below on 23.07.2015. In case the memo/receipt of the payment is filed before the court below, the Court shall proceed to dispose of all pending interlocutory applications, complete the pre-trial steps and to include the case in the next available list for trial. The court below shall try to dispose of the suit at the earliest, considering the fact that this is a suit of 2006. In case, deposit/payment is not made as

above, the court below shall record it and the impugned order will stand revived without any further order.

Sd/-

THOTTATHIL B. RADHAKRISHNAN
Judge

Sd/-

SUNIL THOMAS
Judge

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