

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

MONDAY, THE 1ST DAY OF JUNE 2015/11TH JYAISHTA, 1937

FAO.No. 313 of 2010 ()

AGAINST THE ORDER/JUDGMENT IN I.A.NO.112 OF 2010 IN OS
216/2008 of PRINCIPAL SUB COURT,KOLLAM DATED 03.03.2010

APPELLANT(S)/PETITIONERS/DEFENDANT NOS.2 & 3 :

1. SHEELA, D/O.SARASAMMA,
KANJIRAMVILA VEEDU, PULIYILA CHERRY,
PALLIMON VILLAGE
KOLLAM TALUK.
2. SARASAMMA, WIFE OF GOPALAN,
RESIDING AT S.R.BHAVAN, PULIYILA CHERRY
PALLIMON VILLAGE, KOLLAM TALUK.

BY ADV. SRI.JOHNSON GOMEZ

RESPONDENT(S)/COUNTER PETITIONER/PLAINTIFF:

SHIHABUDEEN, CHARUVILA VEEDU,
CHERIYAVELINALLOOR P.O., VATTAPPARA MURI
VILINALLOOR VILLAGE, KOTTARAKKARA TALUK FROM
SUMMAYYA MANZIL, NEDUMPANA VILLAGE.

R1 BY ADV. SRI.C.R.SIVAKUMAR
R1 BY ADV. SMT.A.R.SINDHU
R1 BY ADV. SMT.NIKHILA SOMAN

THIS FIRST APPEAL FROM ORDERS HAVING COME UP FOR
ADMISSION ON 01-06-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

THOTTATHIL B.RADHAKRISHNAN &
SUNIL THOMAS, JJ.

.....
FAO No.313 of 2010

and

C.M.Appl.No.1737 of 2010
.....

Dated this the 1st day of June, 2015.

J U D G M E N T

Thottathil B.Radhakrishnan, J.

- 1.This appeal is against an order refusing to set aside an ex parte decree. The appellants seek condonation of delay of 67 days in the institution of this appeal.

- 2.We have perused the written statement filed by the appellants before the court below along with the application seeking that the ex parte decree be set aside. We have heard the learned counsel for the parties. We have also perused the materials. We are satisfied that ends of justice require that the impugned order deserves to be set aside paving way for the ex parte decree being nullified, so that there could be proper trial or an out of court settlement by way of mediation or otherwise. We are satisfied that there are sufficient causes to set aside the ex parte decree. We are also satisfied that there are sufficient causes to condone the delay in the institution of this appeal.

3.The learned counsel appearing for the appellants, as also, the learned counsel for the respondent submit that there is fair chance of settlement of this litigation through alternate dispute resolution mode of mediation.

In the result, the order impugned in the appeal is set aside. As a consequence, the interlocutory application in which the impugned order was passed will stand allowed and the ex parte decree in O.S.No.216 of 2008 on the file of Sub Court, Kollam will stand set aside. Parties are directed to mark appearance before the court below on 26.06.2015. We record the submission on behalf of both sides that they are prepared to take recourse to mediation to settle this litigation. The court below will proceed accordingly in the first instance. The C.M.Application and the appeal are allowed as above.

(THOTTATHIL B.RADHAKRISHNAN, JUDGE)

(SUNIL THOMAS, JUDGE)