

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

FRIDAY, THE 24TH DAY OF JULY 2015/2ND SRAVANA, 1937

FAO.No. 189 of 2008 ()

(AGAINST THE ORDER/JUDGMENT IN I.A.NO.186/2004 & 187/2004 IN OS
357/1995 of SUB COURT, MANJERI)

APPELLANT(S)/APPLICANT/3RD DEFENDANT::

MANHAPRA LAKSHMIKUTTY AMMA,
D/O.KALLIANIKUTTY AMMA, TIRUR TALUK, NADUVATTOM
PAZHOOOR.

BY ADVS.SRI.T.SETHUMADHAVAN
SRI.PUSHPARAJAN KODOTH
SRI.K.JAYESH MOHANKUMAR

RESPONDENT(S) PLAINTIFF AND DEFENDANTS::

1. KADER, S/O.MULLAMPALLI AHAMMED KUTTY,
PANG AMSOM DESOM, PERINTHALMANNA TALUK.

2. BHASKARA MENON,
S/O.MANHAPRA KALLIANIKUTTY AMMA,
PAZHOOOR IN KUTTIPPURAM AMSOM, DESOM,
P.O.PAZHOOOR IN TIRUR TALUK.

3. RUGMINI AMMA, D/O.KALLIANIKUTTY AMMA,
SREE NIVAS, S.R.K.NAGAR, OTTAPPALAM AMSOM DESOM,
OTTAPPALAM TALUK.

4. CHELLAMMA RADHAKRISHNA MENON,
W/O.RADHAKRISHNA MENON, PUTHAN NADUVAKKATTU,
LAKSHMI NIVAS, P.O.PALLAVOOR, VIA-KUNISSERY,
PALLAVOOR AMSOM DESOM, OTTAPPALAM TALUK.

5. M.R.KRISHNAN, S/O.LATE RAVUNNI MENON,
MANHAPRA HOUSE, KAVIL PADI, P.O.KALADI,
TIRUR TALUK, MALAPPURAM DISTRICT.

6. RAMU KAVILPADI, S/O.LATE RAVUNNI MENON,
MANHAPRA HOUSE, KAVIL PADI , P.O.KALADI
TIRUR TALUK, MALAPPURAM DISTRICT.

7. SANKARANARAYANAN, S/O.LATE RAVUNNI MENON,
MANHAPRA HOUSE, KAVIL PADI , P.O.KALADI
TIRUR TALUK, MALAPPURAM DISTRICT.

8. KALLIANIKUTTY AMMA,
D/O.LATE RAVUNNI MENON, MANHAPRA HOUSE, KAVIL PADI
P.O.KALADI, TIRUR TALUK, MALAPPURAM DISTRICT.

9. PADMAJA DEVI, D/O.LATE RAVUNNI MENON,
MANHAPRA HOUSE, KAVIL PADI , P.O.KALADI
TIRUR TALUK, MALAPPURAM DISTRICT.

10. GEETHA, D/O.LATE RAVUNNI MENON,
MANHAPRA HOUSE, KAVIL PADI , P.O.KALADI
TIRUR TALUK, MALAPPURAM DISTRICT.

11. K.P.UMADEVI, W/O.LATE RAVUNNI MENON,
MANHAPRA HOUSE, KAVIL PADI , P.O.KALADI
TIRUR TALUK, MALAPPURAM DISTRICT.

12. MOHANAN, S/O.LATE GOPALA MENON,
KUTTIPPURAM AMSOM DESOM, PAZHOOR P.O., VIA.KUTTIPPURAM
TIRUR TALUK.

13. BALAN, S/O.LATE GOPALA MENON,
KUTTIPPURAM AMSOM DESOM, PAZHOOR P.O., VIA.KUTTIPPURAM
TIRUR TALUK.

14. P.RAMANI, D/O.LATE MANHAPRA
JANARDHANA MENON, PARAKKAD VADAKKAYIL HOUSE
VALANJERI AMSOM DESOM, KAVUMPURAM.

15. P.JAYARAJAN, S/O.DECEASED MANHAPRA
JANARDHANA MENON, THOZHUVANNOOR AMSOM DESOM
TIRUR TALUK.

16. PARVATHI ALIAS AMMUKUTTY NETHIAR,
W/O.DECEASED MANHAPRA JANARDHANA MENON
THOZHUVANNOOR AMSOM DESOM, TIRUR TALUK.

R,R1 BY ADV. SRI.V.RAJENDRAN
R,ADDL.RESPTS BY ADV. SRI.V.RAJENDRAN
R,ADDL.RESPTS BY ADV. SMT.K.S.SABITHA

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON
20-07-2015, THE COURT ON 24/7/2015 DELIVERED THE FOLLOWING:

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

F.A.O. No. 189 of 2008

Dated this the 24th day of July, 2015

JUDGMENT

Sunil Thomas, J.

The third defendant in O.S.No.357 of 1995, aggrieved by the dismissal of I.A. Nos.186 of 2004 & 187 of 2004, which were applications to condone the delay as well as the application to set aside the ex parte decree, has preferred this appeal.

2. In the above suit for partition, the appellant/third defendant, appeared and filed the written statement. Subsequently, she was declared ex parte on 27/2/2003 and the preliminary decree was passed. Contending that medical reasons prevented her from appearing before the court below, she sought for setting aside the ex parte decree, by filing I.A.No.187/2004. It was claimed that she was laid up due to blood pressure and kidney disorders and was advised rest by the doctor and thereby a delay of ten months had occurred in filing the above application, I.A. No.186/2004 was filed

seeking condonation of delay.

3. To substantiate the case of the appellant/ petitioner, PW1 was examined and Exts.A1 to A4 were marked. The court below on an evaluation of the available materials, held that the petitioner failed to prove valid reasons for condoning the delay and dismissed the application seeking condonation of delay. Consequently application to set aside ex parte decree was also dismissed.

4. These orders are under challenge in this appeal. Heard and examined the records.

5. The reason stated for the delay as well as for the absence on 27/2/2003 was that the petitioner was advised rest due to blood pressure and kidney disorder and consequently she could not contact the lawyer. She came to know about the preliminary decree when the notice was served in I.A.No.1972/2003, which was an application for passing the final decree. Thereafter, she contacted the counsel.

6. The case set up by the petitioner was seriously disputed by the plaintiff/contesting respondents. The court below did not rely on Ext.A1 on the ground that even though it stated that the appellant was under the treatment of doctor, it did not reveal

that she was prevented from physically appearing before the court below. Even though the petitioner was set ex parte on 27/2/2003, the application was filed only on 27/1/2004. However, it was admitted that the notice in I.A. No.1972/2003 was served on her on 3/11/2003. This aspect of the delay is not explained properly. Even assuming that Ext.A1 was reliable, the court below still found that it was not a valid reason for the absence of the petitioner. It was for the reason that she was being represented by a power of attorney holder through out the proceedings. Hence, it was not essential that the petitioner herself should contact the lawyer. This reasoning of the court below appears to be valid and sustainable.

7. It was further contended by the learned counsel for the appellant/third defendant that she had a very valid contention in the suit. According to her, the preliminary decree contained a direction to pay the share of profit. It was contended that she has a valid defence in the case and that she was burdened with liability to pay share of profit though she was not in possession of the property. It was contended that the plaintiff was in possession of the property. However, the petitioner was confronted with her own written statement, wherein she had

categorically stated that the property was in her exclusive possession. There was a further averment that the plaintiff was never in possession of the plaint schedule property.

8. In the light of the above, the court below was perfectly justified in holding that the only intention of the petitioner was to delay the proceedings and in rejecting both the applications. No valid reason has been made out to take a different view.

The appeal is hence without any merit and is dismissed. No costs.

Sd/-

THOTTATHIL B.RADHAKRISHNAN
Judge

Sd/-

SUNIL THOMAS
Judge

dpk

/true copy/ PS to Judge.

