

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN
&
THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

MONDAY, THE 6TH DAY OF APRIL 2015/16TH CHAITHRA, 1937

RFA.No. 358 of 2006

JUDGMENT DATED 07-06-2002 IN OS 214/1990 SUB COURT, THIRUVALLA

APPELLANT(S)/DEFENDANTS 2 & 4:

- *1. KUNJUMOL JOHN, W/O.P.T.JOHN,
PADINJATTEDATHU HOUSE,
THATTACKATTU, KUMBANADU.(P/A HOLDER)
- 2. PHILPOSE SHIBU ALIAS SHIBU JOHN,
S/O.P.T.JOHN, PADINJATTEDATHU HOUSE,
THATTACKATTU, KUMBANADU.
- * THE 1ST APPELLANT IS THE POWER OF ATTORNEY HOLDER OF THE
2ND APPELLANT AND THE 4TH RESPONDENT, VIDE JUDGMENT
DTD.6.4.2015 IN RFA 358/2006.

BY ADV. SRI.LEO GEORGE

RESPONDENT(S)/PLAINTIFF/RESPONDENTS/DEFENDANTS 1, 3, 5 TO 41:

- STATE BANK OF INDIA, REPRESENTED BY
ITS HAMIDIA ROAD, BRANCH MANAGER SRI.S.J.RAQMACHANDANI,
& KOTTAYAM BRANCH MANAGER,
SRI.ANTONY D' COUTO.
- 2. P.T.JOHN, PADINJATTEDATHU HOUSE,
KUMBANADU (DIED).
- 3. P.G.PHILIP, F/O.P.T.JOHN OF DO. DO. (DIED).
- 4. SHIJU JOHN, S/O.P.T.JOHN,
PADINJATTEDATHU HOUSE,
THATTACKATTU, KUMBANADU.
- 5. DR.K.V.MATHEW, C/O.P.T.JOHN OF DO. DO.
- 6. VARKEY KURUVILLA OF DO. DO.
- 7. DR.K.T.GEORGE OF DO. DO.
- 8. DR.P.T.THOMAS OF DO. DO.

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9. V.V.MATHEW, VELLOTTIL,
NEDUMPRAVAR, MARAMON (DIED).
 10. THANKAMMA MATHEW, S/O. DO. DO.
 11. DR.C.A.THOMAS, C/O.P.T.JOHN,
PADINJATTEDATHU HOUSE,
THATTACKATTU, KUMBANADU.
 12. C.V.VARGHESE OF DO. DO.
 13. P.C.VARGHESE OF DO. DO.
 14. KUNJAMMA THOMAS, S/O.P.T.JOHN,
ARUVIKAL HOUSE, NELLICKAMON, RANNI.
 15. P.C.THOMAS, C/O.P.T.JOHN,
PADINJATTEDATHU HOUSE,
THATTACKATTU, KUMBANADU.
 16. REV.FR.A.PABRAHAM OF DO. DO.
 17. REV. FR. P.C.ABRAHAM OF DO. DO.
 18. REV. FR. P.J.ABRAHAM OF DO. DO.
 19. P.C.JOSEPH OF DO. DO.
 20. REV. P.C. JOHN OF DO. DO.
 21. BABU VARGHESE OF DO. DO.
 22. T.K.THAMPI OF DO. DO.
 23. THANKACHAN, KOCHUMANNIL OF DO. DO.
 24. V.C. JOSEPH, E.I.D. PARRYA, KOTTAYAM.
 25. S.L.VERMA (SANKAR LAL VERMA),
BRIDGE INSPECTOR, CENTRAL RAILWAY, BHOPAL.
 26. B.SATHYAN, PROPRIETOR OF S.M.SENIOR TYRES,
ANAND TYRES ETC. HAMIDIA ROAD, BHOPAL.
 27. SYAM PRAKASH SAXENA, C/O.SYAM BROTHERS,
SINDHI MARKET, BHOPAL.
 28. M/S.SYAM BROTHERS, SINDHI MARKET, BHOPAL.

Msv/

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29. A.T.CHACKO, C/O.P.T.JOHN,
PADINJATTEDATHU HOUSE,
THATTACKATTU, KUMBANADU.
30. P.E.EASOW,
PADINJARE PUTHERN PURACKAL CHACKO,
KUMBANADU.
31. K.E.VARGHESE, PEEDIKAYIL, KUMBANADU.
32. P.T.VARGHESE, B/O.P.T.JOHN,
PADINJATTEDATHU HOUSE, EDAMON,
CHETHACKAL.
33. SHEELU JOHN, PADINJATTEDATHU,
THATTACKADU, KUMBANADU.
34. THOMAS PADINJATTEDATHU, KUMBANADU.
35. RAJAMMA, MANALUR KOCHU KOICKAL,
SEETHATHODU, KONNI.
36. LEELAMMA, KAVUNGUMPALLIL,
KALATHINKAL, KONNI.
37. SHAJI MATHEW, VELLOTTIL,
THOTTAPPUZHASSERY VILLAGE,
NEDUMPRAYAR MURI, MARAMON.
38. LOVELY MATHEW OF DO. DO.
39. LETTY MATHEW OF DO. DO.
40. AMMINI MATHEW @ ANNIE MATHEW OF DO. DO.

R1 BY ADVS. SRI.GEORGE THOMAS (MEVADA)
SRI.RAYNOLD FERNANDEZ
SMT.VIDYA GOPINATH
R4 BY ADV. SRI.M.SUNIL

THIS REGULAR FIRST APPEAL HAVING BEEN FINALLY HEARD ON
06-04-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

msv/

P.N.RAVINDRAN & ANIL K.NARENDRAN, JJ.

R.F.A.No.358 of 2006

Dated this the 06th day of April, 2015

JUDGMENT

Anil K.Narendran, J.

The appellants are defendants 2 and 4 in O.S.No.214 of 1990 on the file of the Court of the Subordinate Judge of Thiruvalla. The said suit was filed by the first respondent herein for realisation of a total sum of ₹40,24,415.49 with interest @ 16% per annum from the appellants and respondents 2 to 40 jointly and severally and for a declaration that the plaint schedule properties are trust properties of the first respondent in the hands of appellants and also respondents 2 to 40 and that those properties are traceable to the misappropriation made by the second respondent and those properties vest in the first respondent and for recovery of its possession from the appellants and respondents 2 to 40 with mesne profits and directing the appellants and respondents 2 to 31 to render accounts to the first respondent in respect of the transactions enumerated in the plaint.

2. By judgment and decree dated 07.06.2002 the suit was decreed allowing the first respondent to realise a sum of

₹.39,24,415.49 with interest @ 6% per annum on ₹.24,42,136.20 from the date of suit till realisation and costs from defendants 2, 4, 5 and 34 to the extent of the assets they have inherited from the deceased first defendant as his legal heirs and by the sale of plaint A schedule items and B schedule item Nos.1 and 2. The other defendants were also held jointly and severally liable and their liability was limited to the extent of the assets they have inherited as the legal heirs of the deceased defendants. Aggrieved by the judgment and decree of the court below dated 7.6.2002 the appellants are before us in this appeal.

3. On 26.2.2015, when the appeal came up for consideration before this Court, the learned counsel for the appellants/defendants 2 and 4 submitted that the appellants are willing to amicably settle the dispute and that there is every chance of the dispute being settled, if mediation talks are held. The learned counsel for the first respondent/plaintiff did not oppose the said request. In such circumstances, both the parties were directed to be present without fail before the Nodal Officer, Ernakulam Mediation Centre on 5.3.2015.

4. Now the appellants/defendants 2 and 4 and the fourth respondent/fifth defendant have settled the entire disputes with the first respondent/plaintiff in mediation and the terms and conditions of the settlement, reduced to writing in the form of a memorandum of agreement, under section 89 of the Code of Civil Procedure, 1908 read with rules 24 and 25 of the Civil Procedure (Alternative Disputes Resolution), 2008, verified and signed by the first appellant, the second appellant through his power of attorney, the fourth respondent through his power of attorney and the authorised signatory of the first respondent bank and attested by their counsel is forwarded to this Court along with a report of the Mediator dated 27.3.2015, for recording such compromise and to dispose of the appeal in terms of such compromise.

5. Going by the terms and conditions of the memorandum of agreement dated 19.3.2015 the appellants and the fourth respondent have agreed to pay an amount of ₹.85,00,000/- to the first respondent bank in full and final settlement of all the amounts due under the decree, out of which the sum of ₹.40,00,000/- has been paid to the first respondent bank before the execution of the agreement. The first respondent bank has agreed that on receipt of

the balance sum of ₹.45,00,000/- the decree in O.S.No.214 of 1990 of the Court of the Subordinate Judge of Thiruvalla will be satisfied in full. The appellants and the fourth respondent have agreed to pay the balance sum of ₹.45,00,000/- on or before 31.3.2015 and in default of which the first respondent bank is entitled to realise the said amount through execution court. The first respondent bank has agreed to forego all amounts in excess of ₹.85,00,000/- that may be due under the decree.

6. It is also made clear in the memorandum of agreement that, since the entire liability under the decree is assumed by the appellants and the fourth respondent, the other respondents have not been made signatories to this agreement as they are not necessary parties. The first respondent bank has also agreed to file a memo before the Court of the Subordinate Judge of Thirvalla in E.P.No.16 of 2003 in O.S.No.214 of 1990, upon receipt of ₹.85,00,000/-, to report full satisfaction of the decree.

7. Today, the learned standing counsel for the first respondent bank submitted that the bank has already received the sum of ₹.85,00,000/- in full and final settlement of its claim in O.S.No.214 of 1990.

8. In view of the compromise entered into between the parties, we dispose of this appeal recording the payment of ₹.85,00,000/- made by the appellants and fourth respondent to the first respondent bank as payment in full and final settlement of the entire claim in O.S.No.214 of 1990 on the file of the Court of the Subordinate Judge of Thiruvalla. A copy of the memorandum of agreement dated 19.3.2015 shall form part of this judgment.

In view of the settlement of the dispute through mediation it is ordered that the whole court fee paid on the memorandum of appeal shall be refunded to the appellants.

P.N.RAVINDRAN, JUDGE

ANIL K.NARENDRAN, JUDGE

skj

The order to refund the whole court fee paid on the memorandum of appeal to the appellants occurring in the last two lines of the judgment is reviewed and recalled vide order dated 23/02/2016 in R.F.A.No.358/2006.

Sd/-
Registrar (Judicial)