

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

MONDAY, THE 30TH DAY OF MARCH 2015/9TH CHAITHRA, 1937

OP(C).No. 155 of 2015 (O)

(AGAINST THE ORDER IN IA.4646/2014 IN IA.87/2014 &
IA.4647/2014 IN 88/2014 IN OS.127/2012)

PETITIONERS/DEFENDANTS 1 TO 5:

1. SATHEESH KUMAR, AGED 41 YEARS
S/O.KARODI BALAKRISHNAN, RESIDING AT 38/2509 A
SURABHI NIVAS, PUTHIYANGADI AMSOM, EDAKKAD DESOM
KAKKUZHI PALAM ROAD, EAST HILL P.O., WEST HILL
KOZHIKODE TALUK, KOZHIKODE DISTRICT.
2. SMT.RATNAMANI, AGED 60 YEARS
W/O.KARODI BALAKRISHNAN, RESIDING AT 38/2509A
SURABHI NIVAS, PUTHIYANGADI AMSOM, EDAKKAD DESOM
KAKKUZHI PALAM ROAD, EAST HILL P.O., WEST HILL
KOZHIKODE TALUK, KOZHIKODE DISTRICT.
3. SANTHOSH KUMAR, AGED 44 YEARS
S/O.KARODI BALAKRISHNAN, RESIDING AT 38/2509 A
SURABHI NIVAS, PUTHIYANGADI AMSOM, EDAKKAD DESOM
KAKKUZHI PALAM ROAD, EAST HILL P.O., WEST HILL
KOZHIKODE TALUK, KOZHIKODE DISTRICT.
4. SABEESH KUMAR, AGED 36 YEARS
S/O.KARODI BALAKRISHNAN, RESIDING AT 38/2509 A
SURABHI NIVAS, PUTHIYANGADI AMSOM, EDAKKAD DESOM
KAKKUZHI PALAM ROAD, EAST HILL P.O., WEST HILL
KOZHIKODE TALUK, KOZHIKODE DISTRICT.
5. SURABI, AGED 34 YEARS
S/O.KARODI BALAKRISHNAN, RESIDING AT 38/2509 A
SURABHI NIVAS, PUTHIYANGADI AMSOM, EDAKKAD DESOM
KAKKUZHI PALAM ROAD, EAST HILL P.O., WEST HILL
KOZHIKODE TALUK, KOZHIKODE DISTRICT.

BY ADVS.SRI.K.SANEESH KUMAR
SMT.V.B.SANTHINI

cntd...2

OP(C).No. 155 of 2015 (O)

RESPONDENTS/PLAINTIFFS:

1. C.K. JASMINE, AGED 47 YEARS
D/O.MOIDEEN KOYA, RESIDING AT 5/963
PATTAN VEEDU PARAMBA, KACHERI AMSOM & DESOM
NADAKKAVU P.O., KOZHIKODE DISTRICT - 673 012.
2. C.K.THESNEEM, AGED 40 YEARS
D/O.MOIDEEN KOYA, RESIDING AT 1/2161, ROYAL APARTMENTS
KACHERI AMSOM AND DESOM, WEST HILL P.O.
KOZHIKODE DISTRICT - 673 005.

R1-R2 BY ADV. SRI.C.P.MOHAMMED NIAS

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 30-03-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS' EXHIBITS

- EXT.P1: A TRUE PHOTOCOPY OF THE PLAINT FILED BY O.S. 127/2012 ON THE FILE OF THE PRINCIPAL MUNSIF-I, KOZHIKODE DATED 09/03/2012.
- EXT.P2: A TRUE PHOTOCOPY OF THE WRITTEN STATEMENT FILED IN O.S. 127/2012 ON THE FILE OF THE PRINCIPAL MUNSIF-I, KOZHIKODE DATED 30/07/2012 BY THE PETITIONERS/DEFENDANTS 1 TO 4.
- EXT.P3: A TRUE COPY OF THE I.A. 87/2014 FILED IN O.S. 127/2012 ON THE FILE OF THE PRINCIPAL MUNSIF-I, KOZHIKODE DATED 07/01/2014 FILED BEFORE THE MUNSIF COURT-I, KOZHIKODE, TO CONDONE THE DELAY.
- EXT.P4: A COPY OF THE I.A. 88/2014 FILED IN O.S. 127/2012 ON THE FILE OF THE PRINCIPAL MUNSIF-I KOZHIKODE WHICH IS THE APPLICATION TO SET ASIDE THE EXPARTE DECREE BEFORE THE MUNSIF-I COURT, KOZHIKODE, DATED 07/01/2014.
- EXT.P5: A TRUE COPY OF THE DISMISSAL ORDER OF IN IA.NO. 87/2014 IN O.S.NO. 127/2012 ON THE FILE OF THE PRINCIPAL MUNSIF-I, KOZHIKODE.
- EXT.P6: A TRUE COPY OF THE DISMISSAL ORDER OF IN IA NO. 88/2014 IN OS NO. 127/2012 ON THE FILE OF THE PRINCIPAL MUNSIF-I, KOZHIKODE.
- EXT.P7: A TRUE PHOTOCOPY OF I.A. 4646/2014 FILED IN O.S. 127/2012 ON THE FILE OF THE PRINCIPAL MUNSIF-I, KOZHIKODE ON 10/12/2014.
- EXT.P8: A TRUE PHOTOCOPY OF I.A. 4647/2014 FILED IN O.S. 127/2012 ON THE FILE OF THE PRINCIPAL MUNSIF-I, KOZHIKODE DATED 10/12/2014.
- EXT.P9: A TRUE COPY OF THE ORDER PASSED BY THE PRINCIPAL MUNSIF COURT IN I.A 4646/2014 FILED IN O.S. 127/2012 DATED 17/12/2014 DISMISSING EXHIBIT P7.
- EXT.P10: A TRUE COPY OF THE ORDER PASSED BY THE PRINCIPAL MUNSIF COURT IN IA 4647/2014 FILED IN O.S. 127/2012 DATED 17/12/2014 DISMISSING P8.

RESPONDENTS' EXHIBITS : NIL

// TRUE COPY //

PA TO JUDGE

P.BHAVADASAN, J.

O.P.(C) No. 155 of 2015

Dated this the 30th day of March, 2015

J U D G M E N T

Under challenge are Exts. P9 and P10 orders in this original petition under Article 227 of the Constitution of India.

2. The petitioners are defendants in the suit who suffered an exparte decree. They filed I.A. No. 87/2014 to set aside the exparte decree. That was allowed on terms directing the petitioners to pay a sum of ₹ 300/- . Since they did not pay the amount within the stipulated time, they filed I.A.No.4647/2014. That petition was dismissed and consequently the I.A. to set aside the exparte decree is also dismissed. Subsequently, the amount has been paid.

3. It is quite unfortunate that the courts below should cling onto technicalities rather than be concerned of doing justice to the parties. There were no justification for not allowing the petitioners to contest the matter on merits.

In the result, this petition is allowed. The impugned orders are set aside and suit is restored to file and the trial court is directed to dispose of O.S.No. 127/2012 as expeditiously as possible, at any rate, within a period of four months from the date of re-opening of the court.

Sd/-
P.BHAVADASAN
JUDGE

ds

//True copy//

P.A. to Judge