

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

FRIDAY, THE 7TH DAY OF AUGUST 2015/16TH SRAVANA, 1937

OP(C).No. 1530 of 2013 (O)

AS.NO. 260/2009 OF II ADDL. DISTRICT COURT, PALAKKAD

PETITIONER(S):

1. LATHA, W/O.DAMODARAN, AGED 50 YEARS,
KOTTAKKAD VEETIL, MOOLANKODE,
KIZHAKKANCHERRY, ALATHUR TALUK.
2. ANITHA, W/O.DEVADAS, AGED 47 YEARS,
KUNNUKKAD VEETIL, PERUVEMBA AMSOM,
PALAKKAD TALUK.

BY ADV. SRI.T.M.SUNIL

RESPONDENT(S):

1. ROHIT, AGED 35 YEARS, S/O.PREMAKUMARAN,
PILANGAD, MARUTHAROAD AMSOM, PALAKKAD-678 621
2. EVY. V.DON,
S/O.K.V. VARUGHESE, PEACE VILLA,
CHADAYANKALAYI P.O., PUDUSSERRY AMSOM,
KANJIKODE, PALAKKAD. PI-678 621

R1 BY ADVS. SRI.K.MOHANAKANNAN
SMT.A.R.PRAVITHA

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD
ON 07-08-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

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OP(C).No. 1530 of 2013 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1 - TRUE COPY OF AFFIDAVIT OF LAWYER DATED 9-4-2013

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

P.A.TO JUDGE

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SUNIL THOMAS, J.

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O.P(C).No.1530 of 2013

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Dated this the 7th day of August, 2015

JUDGMENT

Petitioners herein are the appellants in A.S.No.260 of 2009 which was posted along with connected appeal A.S.Nos.259 of 2009 of the Additional District Court, Palakkad.

2. These appeals were directed against the judgment and decrees in O.S.Nos.766 of 1999 and 150 of 2004 of the Additional Munsiff's Court, Palakkad. The grievance of the petitioners herein was that the appeals were posted to 15.09.2012 on which day, a proposal for referring the matter for mediation was made. To seek the consent of both sides, the case was thereafter adjourned to 15.10.2012. On that day, the case was not called. According to the petitioners, it was not posted thereafter also. On 01.03.2013, an interlocutory application was filed seeking a certified copy of a document which had been summoned and produced before the trial court. The above I.A. was returned as defective noting that the appeals stood disposed of on 14.12.2012. Time was granted for curing the defects.

3. According to the petitioners, at this juncture, learned counsel for the appellants came to know that the appeals stood

dismissed. On verification, it was understood that there was no posting in the A diary after 15.09.2012 till the date of its final disposal by common judgment on 14.12.2012. However there were corresponding entries on the proceeding paper. According to the petitioners, thereafter, they consulted a lawyer at Ernakulam for the purpose of preferring a second appeal challenging the common judgment and decree. However it was advised that it would be ideal to seek a rehearing of the appeal, rather than losing a right of appeal. Consequently, this original petition was filed.

4. It seems that during the proceedings before this Court, doubts were raised regarding various entries made in the A diary as well as in the posting book. The original records kept in concerned Court were called for and kept in safe custody pending the proceedings. A report was called for from the learned principal District and Sessions Judge, Palakkad relating to the circumstance leading to the pronouncement of the judgment, allegedly, without hearing the petitioners herein. The report is also available on record.

5. Heard both sides and examined the records.

6. A perusal of the entire records coupled with the report of the District Judge indicate that there are reasons to doubt that

atleast in so far as it relates to the petitioners herein, they did not get an opportunity to advance their arguments. The respondents also did not have a case that they were heard. Consequently, the judgment and decree is not legally sustainable and is liable to be set aside.

6. In the light of the report of the District Judge, Palakkad and all attending circumstances, I feel that this matter requires a detailed enquiry into the allegation relating to the entries in the A diary and also in the posting book and as to whether, there has been interpolation or subsequent addition in the A diary and to fix the responsibility, if any, on the persons concerned. The Registrar (Judicial) shall place the matter before the Administrative Judge, Palakkad and seek appropriate orders in this regard. The original A diary and the posting book which are kept in sealed cover will be forwarded to the District Judge along with a copy of this judgment. Since the petitioners herein have already received the photostat certified copies of the relevant documents, the chance of any future interpolation is unlikely.

In the result, this original petition is allowed. The judgment and decree of the Additional District Court, Palakkad in A.S.Nos.259 of 2009 and 260 of 2009 are set aside. The matter is

remitted back to the appellate court for a fresh consideration untrammelled by any of the observations made above. Both sides shall appear before the court below on 04.09.2015. The Court shall proceed to hear both sides, after giving a reasonable opportunity.

Sd/-
SUNIL THOMAS
Judge

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