

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

THURSDAY, THE 26TH DAY OF FEBRUARY 2015/7TH PHALGUNA, 1936

OP(C).No. 493 of 2015 (O)

OS 237/2013 OF MUNSIF COURT, ERNAKULAM
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PETITIONER(S):

**VASUDEVAN PILLAI, AGED 62 YEARS,
S/O.KRISHNA PILLAI, PANTHALATH BUNGLOW, VYTTILA,
POONITHURA VILLAGE, KOCHI - 682 019.**

BY ADV. SRI.P.J.JOSEPH PANIKKASSERY

RESPONDENT(S):

- 1. BABY PHILOMINA, AGED 56 YEARS,
W/O.LATE DEVASI PANDARAPADATH HOUSE,
FATHIMA CHURCH ROAD, ELAMKULAM VILLAGE, KALOOR,
KOCHI - 682 020.**
- 2. SMT.TINTU, AGED 27 YEARS,
W/O.JOSHI, PANDARAPADATH HOUSE, FATHIMA CHURCH ROAD,
ELAMKULAM VILLAGE, KALOOR, KOCHI - 682 020.**
- 3. MR.JOSHY, AGED ABOUT 33 YEARS,
S/O.JOSEPH, PANDARAPADATH HOUSE, FATHIMA CHURCH ROAD,
ELAMKULAM VILLAGE, KALOOR - 682 020.**

**THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 26-02-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

P.BHAVADASAN, J.

O.P.(C) No. 493 of 2015

Dated this the 26th day of February, 2015

J U D G M E N T

On a complaint that the court below has precluded the plaintiff in the suit from adducing evidence in support of his case, this Court call for a report from the court below and the report has been received.

2. The report very eloquently sets in detail as to what transpired during the trial of the suit. The petitioner wanted to examine a surveyor for which steps were directed to be taken on several occasions. On a few occasions, steps were not taken and proceedings were dismissed and they were restored thereafter. On one occasion, it so happened that when summons was taken out, the surveyor had been already transferred to another office. The court below gave several subsequent opportunities for the petitioner to examine the said witnesses. On going by the report it is seen that on a quite few occasions, when the case was

posted, the plaintiff was absent. On 29.01.2015, the defence witnesses were examined and documents were marked. Both the parties submitted before the Munsiff Court that there was no further evidence and the evidence was closed and matter was posted for hearing to 05.02.2015. On 05.02.2015, both parties were absent and on the very same date, I.A.No. 1157/2015 was filed by the plaintiff for re-opening the evidence for examining witnesses. That petition was dismissed for default. Due to the absence of plaintiff and the defendant on 05.02.2015, the case was adjourned for hearing to 18.02.2015. On 18.02.2015, the plaintiff sought time for hearing. The same was allowed the matter was posted to 23.02.2015 for hearing. On 23.02.2015, the plaintiff was not ready for hearing and time was sought for stating that O.P.(C) was filed before the High Court in this matter. The case now stands posted to 27.02.2015. On going through the report, it is evident that there is no substance at all in the complaint

voiced by the petitioner that he has been precluded from from adducing evidence. Number of opportunities were given to him but he did not utilize.

3. Such a conduct on the part of the petitioner cannot be countenanced. The court has to go on with the case. Innumerable opportunities were given to the petitioner. If any laches has occurred, that is solely on the part of the plaintiff.

This petition is without merits and it is accordingly dismissed.

Sd/-
P.BHAVADASAN
JUDGE

ds

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P.A. to Judge