

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

TUESDAY, THE 22ND DAY OF SEPTEMBER 2015/31ST BHADRA, 1937

OP(C).No. 2117 of 2011 (O)

AGAINST THE ORDER/JUDGMENT IN AS 63/2009 of SUB COURT, CHERTHALA

AGAINST THE ORDER/JUDGMENT IN OS 664/2005 of ADDL.MUNSIFF
COURT, CHERTHALA

PETITIONER(S)/PETITIONERS:

1. N.K.RAGHAVAN, S/O.KESAVAN,
PADANNAYIL HOUSE, PARAYAKADU P.O.
KUTHIYATHODU VILLAGE, CHERTHALA.

2. N.K.ANIRUDHAN, S/O.KESAVAN,
NAYILATH COLONY, K.P.WARD NO.10, THURAVOOR P.O.
CHERTHALA.

3. LEELA, D/O.KESAVAN,
ANNAKKUNNEL, PUTHANKAVU, THIRUMALABHAGOM P.O.
CHERTHALA.

BY ADVS.SRI.T.JAYAKRISHNAN
SRI.NIDHI BALACHANDRAN

RESPONDENT(S):

1. N.K.KARUNAKARAN,
S/O.KESAVAN, THOTTUNGAL NIVARTH, K.P.WARD NO.2
PARAYAKADU P.O., CHERTHALA-688 540.

2. ALLI, D/O.KESAVAN & W/O.VISWAMBHARAN,
PISHARATHU VEEDU, VARANADU P.O., CHERTHALA-688 543.

3. N.K.ASHOKAN, THOTTUNGAL NIVARTH,
K.P.WARD NO.2, PARAYAKADU P.O., CHERTHALA-688 540.

R1-2 BY ADV. SRI.P.SANTHOSH KUMAR (PANAMPALLI NAGAR)
R1-2 BY ADV. SRI.LUIZ GODWIN D'COUTH
R1-2 BY ADV. SRI.K.P.CHANDRASEKHAR

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 22-09-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP(C) .No. 2117 of 2011

APPENDIX

PETITIONERS' EXHIBITS:

EXHIBIT P1: COPY OF I.A.NO.1154/2009 DATED 5.8.2009 IN THE FILES OF SUB COURT CHERTHALA.

EXHIBIT P2: COPY OF OBJECTION FILED BY THE RESPONDENTS TO I.A.NO.1154/2009.

EXHIBIT P3: COPY OF ORDER PASSED IN I.A.1154/2009 IN I.A.NO.1154/2009 DATED 15.12.2010 IN THE FILES OF SUB COURT CHERTHALA.

EXHIBIT P4: COPY OF JUDGMENT PASSED IN A.S.NO.63/2009 IN THE FILES OF SUB COURT CHERTHALA DATED 15.12.2010.

EXHIBIT P5: COPY OF JUDGMENT PASSED IN O.S.NO.664/2005 IN THE FILES OF MUNSIFFS COURT CHERTHALA DATED 19.12.2007.

/TRUE COPY/

PS TO JUDGE

vgs

P.B.SURESH KUMAR, J.

O.P(C).No.2117 of 2011

Dated this the 22nd day of September, 2015

JUDGMENT

This original petition arises from O.S.No.664 of 2005 on the file of the Munsiff Court, Cherthala. The petitioners are the plaintiffs in the suit. The suit was one for partition. The trial court dismissed the suit. The decision of the trial court was challenged by the plaintiffs in A.S.No.63 of 2009 before the Sub Court, Cherthala. There was, however, a delay of 592 days in filing the appeal. The plaintiffs therefore filed I.A.No.1154 of 2009 seeking orders to condone the delay in filing the appeal. I.A.No.1154 of 2009 was dismissed by the appellate court as per Ext.P3 order. The plaintiffs are aggrieved by the said order and

hence this original petition.

2. Ext.P1 is the copy of I.A.No.1154 of 2009. The only reason stated by the appellants in the affidavit filed in support of the said application is that when the son of the first appellant consulted a Senior Counsel of this Court on 1.8.2009, the appellants were advised to challenge the decision of the trial court. The appellate court took the view that the said reason cannot be accepted as sufficient cause for the long delay of 592 days in filing the appeal and accordingly, the delay petition was dismissed. In the light of the reason stated by the appellants, the appellate court cannot be blamed for having dismissed the delay petition. However, since the valuable rights of the plaintiffs over an item of immovable property are at stake, my conscience does not permit to deny the plaintiffs an opportunity to challenge the decision of the trial court on merits. In the circumstances, having regard to the stake of the matter

involved in the appeal, I deem it appropriate to condone the delay in filing A.S.No.63 of 2009 on terms.

In the result, the original petition is allowed, Ext.P3 order is set aside and I.A.No.1154 of 2009 in A.S.No.63 of 2009 is allowed on condition that the petitioners shall pay a sum of Rs.10,000/- (Rupees ten thousand only) as costs to the learned counsel for the respondents before this Court and a file memo to that effect within four weeks from today.

P.B.SURESH KUMAR, JUDGE.

smm

In compliance of the direction in the judgment dated 22/09/2015 in OP(C)No.2117/2011, Rs.10,000/- (Rupees Ten thousand only) has been paid to the counsel for the respondents within the stipulated time.

Vide memo dated 01/10/2015 bearing c.f.2990/2015.

Sd/-
REGISTRAR (JUDICIAL)