

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

MONDAY, THE 21ST DAY OF DECEMBER 2015/30TH AGRAHAYANA, 1937

RSA.No. 393 of 2007 ()

AGAINST THE JUDGMENT IN A.S. 84/2000 of ADDITIONAL DISTRICT COURT,
PATHANAMTHITTA DATED 09-10-2006

AGAINST THE JUDGMENT IN O.S.No. 211/1997 of MUNSIFF COURT, RANNI
DATED 30-10-2000

APPELLANT:(APPELLANT/PLAINTIFF):

ANNAMMA ABRAHAM (DIED)
KURUDAMANNIL PUTHENPURACKAL MEPPURATHU VEETIL,
KOTTATHOOR MURI, AYROOR VILLAGE, RANNY TALUK.

(LRS IMPEADED AS ADDL.APPELLANTS 2 &3)

*ADDL.APPELLANTS

2. ITTICHERRI ABRAHAM, AGED 51 YEARS,
S/O. ABRAHAM,
KURUDAMANNIL PUTHENPURACKAL MEPPURATHU VEETIL,
KOTTATHUR MURI, AYROOR VILLAGE, RANNY TALUK.

3. ALEYAMMA ABRAHAM,
D/O. ABRAHAM,
KURUDAMANNIL PUTHENPURACKAL MEPPURATHU VEETIL,
KOTTATHUR MURI, AYROOR VILLAGE, RANNY TALUK.

LEGAL REPRESENTATIVES OF DECEASED SOLE APPELLANT ARE IMPEADED
AS ADDL.APPELLANTS 2 &3 AS PER ORDER DATED 21/12/2015 IN IA 2608/2015.

BY ADV.SRI.SATHISH NINAN

RSA.No. 393 of 2007 ()

RESPONDENTS:(RESPONDENTS/DEFENDANTS):

- 1. MOHANAN NAIR, AMBALATHU VEETIL,
KOTTATHUR MURI, AYROOR VILLAGE.**
- 2. BIJU, AMBALATHU VEETIL,
KOTTATHUR MURI, AYROOR VILLAGE.**
- 3. YOGANANDAN @ ANIYAN, (DIED, SUBSTITUTION NOT NECESSARY)
AMBALATHU VEETIL, KOTTATHUR MURI,
AYROOR VILLAGE.**

R1 & R2 BY ADV. SRI.S.SUBHASH CHAND

*** The 3rd respondent who was set exparte in the suit is now no more and the appellant is exempted from the necessity of substituting with the legal representatives of the deceased respondent as per per the judgment dated 21-12-2015 in RSA No.393/2007.**

**THIS REGULAR SECOND APPEAL HAVING BEEN FINALLY HEARD ON
21-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

MJL

ALEXANDER THOMAS, J.

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R.S.A.No.393 of 2007

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Dated this the 21st day of December, 2015

JUDGMENT

Heard Sri.Sathish Ninan, learned counsel appearing for the appellants and Sri.S.Subhash Chand, learned counsel appearing for R1 and R2. R3 is defendant No.3 in the suit, who was set ex parte in the Original Suit. D3 had also not entered appearance both in the Appeal Suit before the lower appellate court as well as in this Regular Second Appeal before this Court, despite completion of service of notice.

2. It is submitted by both sides that in pursuance of the order dated 09-11-2015 rendered by this Court in this Appeal, both sides (appellants and respondents 1 and 2) had settled the disputes to the best satisfaction of both sides and that the Mediation Centre of this Court has produced the Memorandum of settlement arrived at between the parties under Sec.89 of the Code of Civil Procedure

read with Rules 24 and 25 of the Civil Procedure (Alternate Dispute Resolution), Rules, 2008 on 23-11-2015. The aforesaid memorandum of settlement dated 23-11-2015, arrived at between the parties has been produced before this Court, which reads as follows:

- “1.The properties of the appellant and respondent (plaintiff and defendant) shall be measured by the Taluk Surveyor, Pathanamthitta on the basis of resurvey plan, and the boundary separating the properties shall be fixed.
2. A plan shall be prepared by the Taluk Surveyor on such measurement, and the properties of the appellant and respondent (Plaintiff and Defendant) shall be specifically indicated herein.
3. Both parties agree to abide by with the said plan regarding the title and possession of each of the parties over the respective portions as shown the said plan.
4. A fence shall be put up on the boundary so fixed.
5. The costs/expenses to be incurred for getting the property measured by the Taluk Surveyor and for putting up the fence as mentioned above shall be borne in equal proportions by both the parties.
6. Both parties agree that the respective court fee paid on the appeal Memorandum and the cross objection can got refunded as per rules.”

3. Both sides also submit that, R3 herein (D3 in O.S) was set ex parte in the Suit, and is now no more and that in view of the provisions contained in order XXII Rule 4 (4) of the CPC, this Court is empowered to exempt the plaintiff from the necessity of substituting the legal representatives of the defendant who has failed to file the written statement or who having failed to appear

and contest the suit at the time of hearing and that judgment in such a case can be pronounced against such defendant notwithstanding the death of such defendant and shall have the same force and effect as it has been pronounced before the death took place, etc. Accordingly, both sides submit that this Court may order that the suit will stand decreed in terms of the aforestated memorandum of settlement dated 23-11-2015 arrived at between the parties and to order that the said memorandum of settlement will form part of the decree.

4. In view of the aforestated submissions made by both sides it is ordered in the interest of justice that the suit will stand decreed in terms of the aforestated memorandum of settlement dated 23-11-2015 arrived at between the parties and the said settlement will form part of the decree.

With these observations and directions the Regular Second Appeal stands finally disposed of. The parties will suffer the respective costs.

Sd/- ALEXANDER THOMAS, JUDGE

MJL