

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN
&
THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN**

WEDNESDAY, THE 4TH DAY OF MARCH 2015/13TH PHALGUNA, 1936

RFA.No. 742 of 2009 ()

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AGAINST THE JUDGMENT AND DECREE IN OS 177/2003 of PRL.SUB COURT,
KOTTAYAM DATED 26-11-2007**

APPELLANT/DEFENDANT:

**K.C.VARGHESE @ KUNJUNJUKUTTY,
S/O.CAHACKO, AGED 55 YEARS,
KATTAMPACKAL, PONGAMTHANAM KARA,
THOTTAKKADU VILLAGE, KOTTAYAM DISTRICT.**

BY ADV. SRI.JOSE PALLATTUKARAN

RESPONDENTS/PLAINTIFFS:

- 1. SOPHIAMMA KURIAN, AGED ABOUT 39 YEARS,
W/O.KURIAN, ALAKKAPRAMBIL, KUMBANADOM MURI,
MADAPPALLY VILLAGE, KOTTAYAM DISTRICT.**
- 2. MARIAMOL, D/O.KURIAN, AGED ABOUT 14 YEARS,
ALAKKAPRAMBIL, KUMBANADOM MURI,
MADAPPALLY VILLAGE, KOTTAYAM DISTRICT.
REPRESENTED BY SOPHIAMMA KURIAN, AGED ABOUT 39 YEARS,
W/O.KURIAN, ALAKKAPRAMBIL, KUMBANADOM MURI,
MADAPPALLY VILLAGE, KOTTAYAM DISTRICT.**
- 3. MERIN KURIAN, AGED ABOUT 13 YEARS,
ALAKKAPRAMBIL, KUMBANADOM MURI,
MADAPPALLY VILLAGE, KOTTAYAM DISTRICT.
REPRESENTED BY SOPHIAMMA KURIAN, AGED ABOUT 39 YEARS,
W/O.KURIAN, ALAKKAPRAMBIL, KUMBANADOM MURI,
MADAPPALLY VILLAGE, KOTTAYAM DISTRICT.**

4. MAREENAMOL KURIAN, D/O. KURIAN, AGED ABOUT 9 YEARS,
ALAKKAPRAMBIL, KUMBANADOM MURI,
MADAPPALLY VILLAGE, KOTTAYAM DISTRICT.
REPRESENTED BY SOPHIAMMA KURIAN, AGED ABOUT 39 YEARS,
W/O.KURIAN, ALAKKAPRAMBIL, KUMBANADOM MURI,
MADAPPALLY VILLAGE, KOTTAYAM DISTRICT. *(ATTAINED MAJORITY)

*(IT IS RECORDED THAT THE 4TH RESPONDENT IN THE APPEAL HAS
ATTAINED MAJORITY ON 4.2.2015 VIDE JUDGMENT DT.4.3.2015 IN I.A
NO.479/2015)

5. MARIAN SUNNY, S/O. KURIAN, AGED ABOUT 8 YEARS,
ALAKKAPRAMBIL, KUMBANADOM MURI,
MADAPPALLY VILLAGE, KOTTAYAM DISTRICT.
REPRESENTED BY SOPHIAMMA KURIAN, AGED ABOUT 39 YEARS,
W/O.KURIAN, ALAKKAPRAMBIL, KUMBANADOM MURI,
MADAPPALLY VILLAGE, KOTTAYAM DISTRICT.

R,R1TO5 BY ADV. SRI.TOM JOSE (PADINJAREKARA)

THIS REGULAR FIRST APPEAL HAVING BEEN FINALLY HEARD ON
04-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.N.RAVINDRAN & ANIL K. NARENDRA, JJ.

R.F.A.No.742 OF 2009

Dated this the 4th day of March, 2015

J U D G M E N T

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**P.N.Ravindran, J.**

The appellant is the defendant in O.S.No.177 of 2003 on the file of the Court of the Principal Subordinate Judge of Kottayam. The respondents are the plaintiffs therein. The suit instituted by the respondents for realisation of the sum of Rs.4,00,000/- as damages together with interest and costs from the defendant and his assets was decreed after trial and the plaintiffs were allowed to realise the sum of Rs.4,00,000/- with interest at 8% per annum from the date of suit till the date of decree and at 6% per annum thereafter.

2. When this appeal came up for hearing before us on 30.1.2015, pursuant to the submission made by the learned counsel on both sides and there is a likelihood of the dispute between the parties being settled out of court if mediation talks are held, we directed the parties to be present before the Nodal Officer, Ernakulam Mediation Centre on 18.2.2015. After mediation, the dispute between the parties was settled and a memorandum of settlement signed by the appellant and his counsel and by 1<sup>st</sup> respondent on her own behalf

and on behalf of respondents 2 and 5 and by respondents 3 and 4 in person and by their counsel have been placed on record. A copy of the memorandum of settlement dated 23.2.2015 is appended to this judgment. The memorandum of settlement recites that the appellant has agreed to pay and the respondents have agreed to receive the sum of Rs.7,00,000/- towards full and final settlement of their claims under the decree in O.S.No.177 of 2003 above referred to. The manner and method in which the sum of Rs.7,00,000/- has to be paid are also set out therein. The terms of settlement disclose that a cheque for Rs.3,00,000/- has already been handed over by the appellant to the first respondent and it was submitted at the Bar that the said cheque has been encashed. The agreement also stipulates that it will be open to the respondents to withdraw the sum of Rs.1,50,000/- deposited by the appellant in the court below pursuant to the interim order passed by this Court on 21.1.2010. It is also stated that the balance sum of Rs.2,50,000/- will be paid before 30.03.2015.

3. The 5<sup>th</sup> respondent is even today a minor. The learned counsel appearing for the respondents has filed I.A.No.479 of 2015 under order XXXII Rule 7 of the Code of Civil Procedure read with Rule 5 (h) of the Alternate Disputes Redressal Rules praying for grant

of leave to the first respondent to enter into a compromise on behalf of the minor 5<sup>th</sup> respondent. The learned counsel appearing for the respondents has also filed a certificate to the effect that settlement entered into between the parties is beneficial to the 5<sup>th</sup> respondent. In the affidavit filed in support of I.A.No.479 of 2015, it is averred that the amount due under the decree as on 10.6.2009, the date on which E.P.No.279 of 2009 was filed, was Rs.6,03,211/- and that if the sum of Rs.7,00,000/- is now received in lump, it will be beneficial for the welfare of respondents 2 to 5, that the amount thus received can be utilised to meet the needs and necessities of respondents 2 to 5 and, therefore, leave may be granted to enter into a compromise on behalf of the 5<sup>th</sup> respondent. The learned counsel appearing for the respondents has contended that the compromise ensures lump sum payment of the decree debt and it can be used for the benefit of the respondents, especially the minor 5<sup>th</sup> respondent.

4. We heard learned counsel appearing for both sides. We have also gone through the impugned decree and judgment, the memorandum of settlement as also the contents of the affidavit filed in support of I.A.No.479 of 2015 and certificate issued by the learned counsel appearing for the respondents. From the materials before us, we are satisfied that the payment of sum of Rs.7,00,000/- will satisfy a

substantial part of the claim of the respondents under the decree impugned in the appeal. Part payment has also been made. The settlement is, in our opinion, beneficial to all the respondents including the minor 5<sup>th</sup> respondent. The suit was instituted on the allegation that the appellant murdered the father of respondents 2 to 5 and husband of the first respondent. The first respondent mother is now looking after the children. She is not gainfully employed. In such circumstances, we are of the opinion that leave should be granted to the first respondent to enter into a compromise on behalf of the minor 5<sup>th</sup> respondent. We, however, notice that the agreement does not contain any stipulation to the effect that 1/5<sup>th</sup> of the sum of Rs.7,00,000/- should be kept in deposit in the name of the minor 5<sup>th</sup> respondent until he attains the age of majority. Likewise, we also find that the 2<sup>nd</sup> respondent, who is a major has not signed the memorandum of settlement. In our opinion these defects can be remedied by directing the first respondent to ensure that the 2<sup>nd</sup> respondent issues a duly stamped receipt in favour of the appellant acknowledging receipt of her share in sum of Rs.7,00,000/-, namely, the sum of Rs.1,40,000/-. Likewise, we also deem it appropriate to direct that 1/5<sup>th</sup> of the sum of Rs.7,00,000/-, namely, the sum of Rs.1,40,000/- shall be kept in fixed deposit in the name of the minor

5<sup>th</sup> respondent until such time as she attains the age of majority.

5. We accordingly allow I.A.No.479 of 2015 and grant leave to the first respondent to enter into the compromise evidenced by the memorandum of settlement dated 23.2.2015 on behalf of the 5<sup>th</sup> respondent and dispose of the appeal in terms of the compromise entered between the parties as reflected in the memorandum of settlement.

The court fee paid on the memorandum of appeal shall be refunded in full to the appellant. Having regard to the facts stated above, we also deem it appropriate to direct in exercise of the power conferred on us under Rule 11 of Order XXXIII of the Code of Civil Procedure that the court fee payable on the plaint need not be recovered from the plaintiffs who were allowed to sue as indigent persons.

**sd/-**

**P.N.RAVINDRAN, JUDGE.**

**sd/-**

**ANIL K. NARENDRAN, JUDGE.**