

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE SUNIL THOMAS

TUESDAY, THE 23RD DAY OF JUNE 2015/2ND ASHADHA, 1937

RFA.No. 107 of 2012 ()

AGAINST THE ORDER/JUDGMENT IN OS 124/2009 of SUB COURT,
NEDUMANGAD DATED 03.12.2010

APPELLANT(S) : /DEFENDANTS

1. ABDUL KAREEM, AGED 60 YEARS,
S/O.ABDULLA PILLAI, SIBIN NIVAS,
KANJHIKUZHI, MANICKAL VILLAGE,
KUDIRAKULAM P.O., VEMBAYAM,
NEDUMANGADU, TRIVANDRUM, PIN - 695 615.
2. SEENA, AGED 28 YEARS, D/O.SHAHIDA BEEVI,
-DO-.
3. SIJI, AGED 23 YEARS, D/O.SHABIDA BEEVI,
-DO-.
4. SHAHIDA BEEVI, AGED 48 YEARS,
W/O.ABDUL KAREEM,
-DO-.

BY ADVS.SRI. ANIL D. NAIR
SRI.J.R. PREM NAVAZ
SMT. NIVEDITA A.KAMATH

RESPONDENT(S) : /PLAINTIFFS

1. NISSAR, AGED 44 YEARS,
S/O.MUHAMMED KUNJU,
SHAN MANZIL, KOCHALUMMOODU,
NEDUVELI MURI, VEMBAYAM VILLAGE,
PIN - 695 615.
2. SIBIN, AGED 23 YEARS, S/O.ABDUL KAREEM,
SIBIN NIVAS, KANJHIKUZHI, MANICKAL VILLAGE,
KUDIRAKULAM, P.O.VEMBAYAM,
NEDUMANGADU, TRIVANDRUM - 695 615.

R1 BY ADV. SRI.SREEKANTH S.NAIR
R1 BY ADV. SRI.S.SREEKUMAR (SR.)

THIS REGULAR FIRST APPEAL HAVING BEEN FINALLY HEARD
ON 23-06-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

THOTTATHIL B.RADHAKRISHNAN &
SUNIL THOMAS, JJ.

.....
R.F.A.No.107 of 2012
.....

Dated this the 23rd day of June, 2015.

J U D G M E N T

Thottathil B.Radhakrishnan, J.

1.This appeal is by the defendants in a suit for specific performance of a contract for sale. It is instituted with leave to sue as indigents. During the pendency of this appeal, parties have arrived at a settlement, by virtue of which they have decided to transfer the property in terms of that settlement. It is also said in the mediation settlement agreement that the defendants agree that the court fee paid before the court below be refunded. It would not be proper for the appellate court to pass any such direction, if it were to finally decide the appeal.

2.Be that as it may, we see that Registry of this Court had initially noticed that the second defendant's power of attorney was not produced in original while settling the matter in mediation. It was offered that the original power of attorney is made available

before the court below. To secure ends of justice, we think that the better course to be adopted will be to set aside the impugned judgment and remit the case to the court below preserving the mediation settlement agreement between the parties to be finally recorded at that end. This would also pave way to the trial court ordering refund of the court fee paid by the plaintiff.

3. Since this order of remand necessitates further proceedings before the court below and in view of the fact that mediation has resulted in settlement between the parties, we order that no court fee shall be recovered from the appealing defendants.

This appeal is ordered accordingly leaving it open to the trial court to record the mediation settlement agreement between the parties finally, after ascertaining the availability of the original power of attorney of the second defendant. Consequential orders refunding the court fee paid on the plaint will also be issued by that court. Parties are directed to mark appearance before the

court below on 30.07.2015. The mediation settlement agreement in original will be transmitted by this Court along with a copy of this judgment to the court below, for further action accordingly.

(THOTTATHIL B.RADHAKRISHNAN, JUDGE)

(SUNIL THOMAS, JUDGE)

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