

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

THURSDAY, THE 5TH DAY OF FEBRUARY 2015/16TH MAGHA, 1936

OP(C).No. 2992 of 2014 (O)

OS.NO. 13/2010 OF MUNSIFF COURT, DEVIKULAM

PETITIONER(S)/DEFENDANTS :

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- 1. ALAGAPPAN, S/O. VELLATHAMPI,AGED 78 YEARS,
PADICUPKUDY TRIBAL SETTLEMENT,
MANNAMKANDOM VILLAGE, DEVIKULAM TALUK, IDUKKI DIST.**
 - 2. BOBAN, S/O. PAULOSE,
KULANGARAKUDIYIL HOUSE, PADICUP KARA,
MANNAMKANDOM VILLAGE, DEVIKULAM TALUK, IDUKKI DIST.**

BY ADV. SRI.LATHEESH SEBASTIAN

RESPONDENT/PLAINTIFF :

**AMMINI, D/O. ALAGAPPAN,AGED 50 YEARS,
PADICUPKUDY TRIBAL SETTLEMENT,
MANNAMKANDOM VILLAGE, DEVIKULAM TALUK,
IDUKKI DIST-685 586.**

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD
ON 05-02-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

sts

OP(C).No. 2992 of 2014 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

- P1. TRUE COPY OF THE PLAINT IN OS NO. 13/2010 OF MUNSIFF COURT, DEVIKULAM.
- P2. TRUE COPY OF THE WRITTEN STATEMENT EXT.P1 SUIT.
- P3. TRUE COPY OF THE I.A. NO. 1117/2014 IN EXT.P1.
- P4. TRUE COPY OF THE ORDER DATED 9-12-14 IN EXT.P3.

RESPONDENT(S)' EXHIBITS:

NIL

/TRUE COPY/

P.A.TO.JUDGE

sts

P.BHAVADASAN, J.

O.P.(C) No.2992 of 2014

Dated this the 05th day of February, 2015

J U D G M E N T

Under challenge is Ext.P4 order whereby the court below dismissed an application filed by the petitioners to set aside the exparte order passed against him.

2. When the suit was included in the list for trial, the defendants filed I.A.No. 1089/2014 to remove the case from the list. That was dismissed. The plaintiff filed proof affidavit and the case was posted to 08.12.2014. On that day also, the defendants filed I.A.No.1117/2014 to remove the case from the list. That was also dismissed and the petitioners were set exparte. The case was thereafter adjourned to enable the plaintiff to adduce further evidence and for hearing. In the meanwhile, petitioners filed I.A.No. 1120/2014 to amend the written statement and also filed I.A.No. 1117/2014 to set aside the exparte order and get them contest the suit. That petition was also dismissed.

3. This is not a case where the plaintiff's evidence

was over. The case was posted at the relevant time for further evidence of the plaintiff and from the narration of events available from the order, it would appear that examination of plaintiff himself was not over. Whatever that be, there was no justification for the court below to have dismissed I.A.No.1117/2014 by which the petitioners prayed that the exparte order passed against them may be set aside and they may be allowed to participate in the proceedings. There is no finding by the court below that the petitioners have been adopting dilating tactics or delaying tactics or that they have not filed written statement. Under these circumstances, it was not proper on the part of the court below in declining the prayer made by the petitioners.

For the above reasons, this original petition is allowed. The impugned order is set aside and the exparte order passed against the petitioners is set aside.

**P.BHAVADASAN
JUDGE**

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