

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM
&
THE HONOURABLE MRS. JUSTICE MARY JOSEPH

MONDAY, THE 14TH DAY OF DECEMBER 2015/23RD AGRAHAYANA, 1937

OP (FC).No. 479 of 2015 ()

(AGAINST THE ORDER IN I.A.NO.346/2014 IN O.P.NO.930/2013 DATED 28.8.2014 ON THE
FILES OF FAMILY COURT, CHAVARA)

PETITIONER(S)/RESPONDENTS::

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1. YUNUS, AGED 67 YEARS
SALAM COTTAGE, KOZHIVILA, PARASSALA VILLAGE
NEYYATTINKARA TALUK, THIRUVANANTHAPURAM DISTRICT
KERALA
REP. BY POWER OF ATTORNEY HOLDER ABDUL SALAM
 2. ABDUL SALAM,
SALAM COTTAGE
KOZHIVILA, PARASSALA VILLAGE, NEYYATTINKARA TALUK
THIRUVANANTHAPURAM DISTRICT, KERALA.

BY ADV. SRI.M.R.SASITH

RESPONDENT(S)/PETITIONER:

JASEERA
JASEERA MANZIL, NADUVILAKKARA, THEVALAKKARA VILLAGE
KARUNAGAPALLY TALUK, KOLLAM DISTRICT, KERALA

R1 BY ADV. SRI.RAVI KRISHNAN

THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION ON
14-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

VS

OP (FC).No. 479 of 2015 ()

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1: TRUE COPY OF THE IA NO.346/2014 IN OP NO.930/2013 FILED BY THE
 PETITIONER DT. 3/3/14**
- EXT.P2: TRUE COPY OF THE IA NO.347/2014 IN OP NO.930/2013 FILED BY THE
 PETITIONER DT. 3/3/14**
- EXT.P3: TRUE COPY OF THE ORDER PASSED BY HON'BLE FAMILY COURT,
 CHAVARA IN IA NO.346/2014 IN OP 930/2013 DATED 28.8.2014.**
- EXT.P4: TRUE COPY OF ORDER PASSED BY HON'BLE FAMILY COURT, CHAVARA IN
 IA NO.347/2014 IN OP NO.930/2013 DATED 28.8.2014.**

RESPONDENT(S)' EXHIBITS

NIL

/TRUE COPY/

PA TO JUDGE

VS

C.K.ABDUL REHIM & MARY JOSEPH, JJ.

O.P.(FC) No.479 of 2015

Dated this the 14th day of December, 2015

JUDGMENT

C.K.Abdul Rehim, J.

The petitioners herein are the respondents in O.P.No.930/13 on the files of the Family court, Chavara, which is instituted by the respondent herein seeking recovery of the value of gold and patrimony. The suit was contested before the court below by the respondent through the written statement filed. The case was posted for evidence before the Family court, Chavara on 12.09.2013. Since both the petitioners and their counsels were not present, the suit was decreed ex-parte. Subsequently, the petitioners filed I.A.No.346/14 seeking to set aside the ex-parte decree, along with an application to condone the delay of 137 days in filing the said application, as I.A.No.347/14. But the Family court had dismissed those interim applications without considering

the merits upon which the application seeking to set aside the decree was filed. I.A.No.346/14 was dismissed on the premise that the relief sought for in that application is to set aside the ex-parte passed on 20.09.2013, whereas actually the decree was passed on 12.09.2013. Stating the very same reason I.A.No.347/14, filed seeking condonation of delay, was also dismissed. It is aggrieved by the said orders, the above original petition is filed by invoking the jurisdiction vested on this Court under Article 227 of the Constitution of India.

2. Heard; counsel appearing on both sides.

3. Learned counsel for the petitioners contended that, the original petition happened to be decreed ex-parte only because the counsel appearing for them had failed to represent the case on 12.09.2015. It is stated that the second petitioner, who is the power of attorney holder of the first petitioner, could not be present before the court below on that date, because of the fact that he was suffering from heart decease and other ailments and was admitted at KIMS Hospital, Thiruvananthapuram. It is also mentioned that the

fact of his hospitalisation could not be intimated to the counsel appearing for the petitioners. Further statements is that the counsel who was appearing for the petitioners was also not present, because her husband was seriously ill and hospitalised and subsequently he passed away. It is contended that the mentioning of the date of the ex-parte decree as 20.09.2013 instead of 12.09.2013 was only due to a mistake committed by the Advocate Clerk in noting the date of the order. It is argued that, the court below ought to have found that the mistake in the date of the decree mentioned in the petition is only due to an inadvertence and should have permitted the petitioners to correct the same.

4. Per contra, learned counsel for the respondent contended that the case was originally instituted before the Family court, Kollam in the year 2010 and the petitioners have purposefully dragged the matter for quite a long period. It is only with such an attempt, the present applications are filed, after the petitioners were declared ex-parte due to valid reasons.

5. Fact remains that the interim applications were

dismissed solely on the ground that the date of decree mentioned therein was not correct. Considering the fact that it is a mistake crept in while preparing the affidavit, the petitioners should have been afforded with an opportunity to get it corrected, by filing appropriate applications for correction. But the court below had dismissed those applications, merely on technicalities, without advertng to any of the reasons mentioned in the affidavit filed in support of those applications. Considering the larger principle of deciding all causes on merits, to the extent possible, rather than dismissing them on technicalities, we are of the opinion that the dismissal of the interim applications solely based on a technicality with respect to discrepancy in the date of decree mentioned, cannot be sustained. It is necessary in the interest of justice to permit the petitioners to contest the original petition on merits. Hence we are of the opinion that it is in the interest of justice to permit the petitioners to get the mistake corrected and to pursue the matter before the court below.

6. Under the above mentioned circumstances the

impugned orders, Exts.P3 and P4, are hereby set aside. Both the interim applications are restored on the files of the Family court, Chavara. The petitioners will be at liberty to file appropriate correction petitions and to pursue the matter before the Family court. If any such petition is filed, the Family court shall consider the same and shall proceed to dispose of the interim applications on merits, at the earliest possible, after affording opportunity of hearing to both sides.

Considering the fact that the original petition was filed as early as in the year 2013, the Family court shall take all earnest efforts to dispose of the interim applications at the earliest possible, at any rate, within a period of one month from the date of receipt of a copy of this judgment.

Sd/-

C.K.ABDUL REHIM, JUDGE

Sd/-

MARY JOSEPH, JUDGE

VS