

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

TUESDAY, THE 24TH DAY OF FEBRUARY 2015/5TH PHALGUNA, 1936

RFA.No. 105 of 2015 ()

AGAINST THE JUDGMENT IN OS 153/2009 of SUB COURT, ALAPPUZHA
DATED 30.6.2011

APPELLANT/3RD DEFENDANT:

A.C. CHANDRIKA, W/O. GANGADHARAN
AZHIKKAKATH HOUSE, PURAKKADU, AMBALAPUZHA
ALAPPUZHA (THE INITIALS OF THE APPELLANT IS WRONGLY MENTIONED IN
THE IMPUGNED JUDGMENT)

BY ADV. SRI. P.B. PRADEEP

RESPONDENTS/PLAINTIFF & DEFENDANTS 1, 2 & 4 TO 6:

1. KALPANA VENUGOPAL
W/O. VENUGOPAL, KOCHAN HOUSE, PLANGODE
CHAVAKKADU, TRISSUR PIN - 680 506.
2. SATHEESAN, S/O. ANDI CHANDRASEKHARAN,
ACHUTHAN VEEDU, INDIRA ROAD, INDIRA NAGAR
EDAPPALLY, ERNAKULAM, KOCHI - 682 024.
3. VINODINI, W/O. RAJAHAMSAN
VINU NIVAS, GUJARATHI STREET, SEA VIEW WAR
ALAPPUZHA - 688 007.
4. A.C. GURUDATH, S/O. ANDI CHANDRASEKHARAN,
AZHIKKAKATH HOUSE, PURAKKADU, AMBALAPUZHA
ALAPPUZHA - 688 007.
5. NAYAN THARA.P, CHILLIYIL HOUSE, KAROOR P.O.,
AMBALAPPUZHA, PIN - 688 007.
6. NITHIL, D/O. NAYAN THARA.P
CHILLIYIL HOUSE, KAROOR P.O., AMBALAPPUZHA
PIN - 688 007.

THIS REGULAR FIRST APPEAL HAVING COME UP FOR ADMISSION ON
24-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

R.F.A.No.105 OF 2015

DATED THIS THE 24th DAY OF FEBRUARY, 2015

JUDGMENT

P.N.RAVINDRAN, J.

We have by order passed today dismissed C.M.Application No.95 of 2015 to condone the delay of 1234 days in filing the appeal. Consequently, the appeal is dismissed as barred by limitation.

SD/-
**P.N.RAVINDRAN,
JUDGE**

SD/-
**ANIL K.NARENDRA,
JUDGE**

dsn

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

C.M.Application No.95 OF 2015
in
R.F.A.No.105 OF 2015

DATED THIS THE 24th DAY OF FEBRUARY, 2015

ORDER

P.N.RAVINDRAN, J.

This is an application to condone the delay of 1234 days in filing R.F.A.No.105 of 2015. R.F.A.No.105 of 2015 arises from the preliminary decree for partition passed by the Court of the Subordinate Judge of Alappuzha on 30.6.2011 in O.S.No.153 of 2009. The appellant is the third defendant therein. The certified copies of the judgment and decree produced along with the memorandum of appeal disclose that they were applied for on 13.11.2014, that stamp papers were called for on 18.11.2014 and produced on the same day, that the copy was ready on 18.11.2014 and that it was delivered over to the learned counsel appearing for the appellant in the court below on 21.11.2014, the date fixed for appearance to receive the certified copy. The instant appeal was filed on 19.2.2015 with a delay of 1234 days. The delay of 1234 days in filing the instant appeal is explained in paragraphs 2 and 3 of the affidavit filed in support of the application

and they are extracted below:

"2. The above suit is for partition. Suit is decreed on 30.6.2011. I was not aware of the execution and registration of two gift deeds in favour of Thankaraj. Immediately on getting knowledge about the documents I applied for certified copy of the judgment. Appeal ought to have filed on or before 28.09.2011. There is a delay of 1234 days in filing the above appeal. In fact I got knowledge about the document only in the first week of October 2014. The delay is occurred due to the reasons aforesaid."

3. There is no wilful laches or deliberate negligence on the part of the appellant or its office bearers including me in not filing the above appeal in time. Herewith I am filing a separate application to condone the delay of 1234 days. If the accompanying application is not allowed, the appellant would be put to irreparable loss and serious prejudice."

2. Apart from merely stating that the appeal ought to have been filed before 28.9.2011, that consequently a delay of 1234 days in filing the appeal has occurred, that the deponent was not aware of the execution or registration of two gift deeds in favour of the Thankaraj and that immediately on getting knowledge of the documents, she applied for certified copy of the judgment, the appellant has not given a cogent and acceptable explanation for the long delay of 1234 days. The deponent appears to be under the belief that she need only state

the number of days of delay and seek condonation of the delay. The averments in the affidavit filed in support of the application do not in our opinion disclose any cause much less sufficient cause for the inordinate delay on the part of the petitioner in applying for the certified copy of the decree and judgment. The certified copies of the judgment and decree produced along with the appeal disclose that they were applied for only on 13.11.2014. The date on which the deponent came to know of the registration of two gift deeds in favour of Thankaraj is also not set out. Whether it was immediately after 30.6.2011, the date on which the suit was decreed or at any point of time thereafter or immediately before 13.11.2014 is not stated in the affidavit. On going through the contents of the affidavit, we are not satisfied that the appellant has shown sufficient cause for the long delay of 1234 days in filing the appeal. The application fails and is accordingly dismissed in limine.

**P.N.RAVINDRAN,
JUDGE**

**ANIL K.NARENDRA,
JUDGE**

dsn

C.M.Appln.No.95/15
in R.F.A.No.105/15