

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

TUESDAY, THE 6TH DAY OF OCTOBER 2015/14TH ASWINA, 1937

RSA.No. 689 of 2012

IA.1385/2010 IN AS 119/2010 AND AS 119/2010 OF SUB COURT, NEYYATTINKARA
IA.4583/1991 IN OS 1574/1989 AND OS 1574/1989 OF I ADDITIONAL MUNSIFF COURT,
NEYYATTINKARA

APPELLANT(S)/APPELLANTS 1, 2 & 4 TO 8 IN FIRST APPEAL/ADDITIONAL

DEFENDANTS 9, 10 & 12-16:

1. RAGHAVAN THANKAPPAN,
MAILADY PURIYAL PUTHEN VEEDU, KULATHUMMAL VILLAGE,
KATTAKADA P.O., THIRUVANANTHAPLURAM DISTRICT,
PIN-695572.
2. RAGHAVAN GOPALAN,
THADATHARIKATHU VEEDU, THUVIPARA, KALLIKKADU,
THIRUVANANTHAPURAM DISTRICT, PIN-695 121.
3. RAGHAVAN SOMAN,
MANNAKKAL VEEDU, ARUMANOOR DESOM P.O.,
THIRUPURAM VILLAGE, THIRUVANANTHAPURAM DISTRICT,
PIN-695 121.
4. RAGHAVAN APPU,
KUNNUVILA VEEDU, PARAKKOTTUKONAM, MARUTHATHOOR DESOM,
NEYYATTINKARA, PIN-695 121.
5. RAGHAVAN SASI,
THAZHANINNA PUTHEN VEEDU, PATHANAVILA, PARANIYAM,
THIRUPURAM VILLAGE, NEYYATTINKARA, PIN-695 121.
6. MANIYAN SANTHA,
MANNAKALLU VEEDU, ARUMANOOR DESOM, THIRUPURAM VILLAGE,
THIRUVANANTHAPURAM DISTRICT, PIN-695 121.
7. MANIYAN SANAL KUMAR,
MANNAKALLU VEEDU, ARUMANOOR DESOM, THIRUPURAM VILLAGE,
THIRUVANANTHAPURAM DISTRICT, PIN-695 121.

BY ADVS.SRI.M.RAMASWAMY PILLAI
SRI.P.M.JOSEPH
SRI.P.VIJAYAKUMAR

RSA.No. 689 of 2012

RESPONDENT(S)/RESPONDENTS IN FIRST APPEAL/ADDITIONAL PLAINTIFFS AND

DEFENDANTS 2 TO 7 & 11 & 3RD APPELLANT IN AS:

1. K.G.SANALKUMAR,
S/O.GOPALAN, KP IV/84, ANAYARA P.O.,
THIRUVANANTHAPURAM-695 001.
2. K.G.SANILKUMAR,
S/O OF GOPALAN, KP.IV/84, ANAYARA,
THIRUVANANTHAPURAM-695 001.
- * 3. KUMARAN NARAYANAN,
MANNALKALLU VEEDU, ARUMANOOR DESOM,
THIRUPURAM VILLAGE-695 121. (DIED) RECORDED
- ** 4. CHINNAYYAN RENGAN, DO. DO.- 695 121. (DIED) RECORDED
5. CHINNAYYAN BHASKARAN, DO. DO.- 695 121.
6. AMMUKKUTYY,
PANTHAPLAVILA VEEDU, VAZHUTHOOR DESOM, NEYYATTINKARA.
7. MANNIKKAM DESAN,
PLANAKALAVILA PUTGHEN VEEDU, ARUMANOOR DESOM-695 121.
8. M.VELAYUDHAN SHASHTIPOORTHY MEMORIAL TRUST,
REPRESENTED BY ITS PRESIDENT, V.JAYACHANDRAN,
RETNA MANDIRAM, T.B.JUNCTION, MANALLOOR,
NEYYATTINKARA, PIN-695 121.
9. LEKSHMI MUTHUKAMALAM,
MELECHIRAYIL VEEDU, AMACHAL, KATTAKADA,
THIRUVANANTHAPURAM DISTRICT, PIN-695 572.
- * THE APPELLANTS ARE EXEMPTED FROM IMPEADING THE LEGAL
REPRESENTATIVES OF DECEASED RESPONDENT NO.3 AT THE RISK OF THE
APPELLANTS AS PER ORDER DTD.22.9.2015 IN IA.3037/2012.
- ** AS PER ORDER DTD.22.9.2015 VIDE MEMO CF 8078/2012 DTD.22.11.2012, THE
DEATH OF RESPONDENT NO.4 IS RECORDED AND HIS LEGAL HEIRS ARE
NOT IMPEADED.

R1, R2 & R8 BY ADV. SRI.R.GOPAN

THIS REGULAR SECOND APPEAL HAVING BEEN FINALLY HEARD ON
06-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

mav/

P.B.SURESH KUMAR, J.

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R.S.A.No.689 of 2012.

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Dated this the 6th day of October, 2015.

J U D G M E N T

The legal representatives of the first defendant in a suit for partition are the appellants in this Second Appeal preferred challenging the final decree in the suit as confirmed in appeal.

2. The suit was one claiming 56/90 share of the plaintiff over the suit property. A preliminary decree was passed in the suit as prayed for by the plaintiff. The first defendant who asserted independent right over the suit property though took up the matter in appeal, the appellate court confirmed the preliminary decree. The matter was taken up by the legal representatives of the first defendant before this Court in R.S.A.No.315 of 2005. Though this Court dismissed the second appeal confirming the

preliminary decree, it was directed in the judgment that as far as possible the building in the suit property shall be allotted to the appellants at the final decree stage. The grievance highlighted by the appellants in the Second Appeal is that the impugned final decree has been rendered by the trial court without referring to the direction issued by this Court in R.S.A.No.315 of 2005. According to the appellants, though they have challenged the final decree in appeal, the appellate court confirmed the final decree without going into the merits of the case on the ground that the appellants have not shown sufficient cause for the delay of 890 days in filing the appeal.

3. Heard the learned counsel for the appellants as also for the learned counsel for respondents 1, 2 and 8.

4. The impugned final decree indicates that the building in the suit property was allotted to the share of the 7th defendant. Going by the preliminary decree, the 7th defendant is entitled to an extent of 6.500 cents and the first defendant is entitled to only an extent of 4.350 cents.

A perusal of the final decree indicates that the judgment of this Court in R.S.A.No.315 of 2005 was never brought to the notice of the final decree court. As noticed above, there was no occasion for the appellate court to consider the merits of the contentions as the appellate court chose to dismiss the appeal on the ground of delay. Thus, I am on the question as to whether the appellate court was justified in dismissing the appeal on the ground of delay. The affidavit filed in support of the application to condone the delay in filing the appeal before the lower appellate court was made available to me at the time of hearing. It is seen that the stand taken by the appellants in the affidavit is that the counsel engaged by them before the trial court did not inform them about the final decree passed in the suit. True, the said statement cannot be accepted as sufficient cause for the long delay of 890 days in filing the appeal. However, having regard to the merits of the contentions raised, especially the arguments based on the decision of this Court in R.S.A.No.315 of 2005, I am of the view that

the appellate court should have condoned the delay in filing the appeal, for, willful neglect or laches in not filing the appeal on time cannot be attributed on the appellants, at any rate, in the light of the decision of this Court in the Second Appeal referred to above. In the said circumstances, I deem it appropriate to condone the delay in filing the appeal before the lower appellate court, on terms.

In the result, I.A.No.4583 of 1991 filed by the appellants before the lower appellate court to condone the delay in filing A.S.No.119 of 2010 is allowed on condition that the appellants shall pay to the counsel for the respondents before this Court a sum of Rs.5,000/- (Rupees five thousand only) by way of costs within a month from today. If the costs as directed is paid, the appellate court shall restore A.S.No.119 of 2010 to file and dispose the same on merits. Having regard to the facts and circumstances of the case, I also deem it appropriate to direct the appellate court to dispose of the appeal on merits, as expeditiously as possible, at any rate, within a period of

three months from today.

The Second Appeal is disposed of as above.

Sd/-
P.B.SURESH KUMAR,
JUDGE.

Kvs/-

// true copy //

PA TO JUDGE.

"IA.No.4583 of 1991" occurring in the 1st line of last paragraph of the judgment dated 6.10.2015 in R.S.A.No.689/2012 is corrected and substituted as "I.A.No.1385/2010" , vide suo motu order dated 18.12.2015 in R.S.A.No.689/2012.

Sd/- Registrar (Judicial)