

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE SMT. JUSTICE P.VASHA

TUESDAY, THE 27TH DAY OF OCTOBER 2015/5TH KARTHIKA, 1937

RFA.No. 697 of 2015

AGAINST THE JUDGMENT IN OS 1/2000 of SUB COURT, VATAKARA DATED 16-08-2003

APPELLANTS/LEGAL HEIRS DECEASED PLAINTIFF:

1. AHAMMAD, AGED 60 YEARS
S/O.PATHU, THAYYIL PARKKUM CHANDROTH AVIKKAL
VATAKARA AMSOM DESOM, VATAKARA TALUK.
2. KATHEESSA AGED 53 YEARS
D/O.PATHU, THAYYIL PARKKUM, CHANDROTH AVIKKAL
VATAKARA AMSOM DESOM, VATAKARA TALUK.
3. SAKKARIA AGED 50 YEARS
S/O.PATHU, THAYYIL PARKKUM, CHANDROTH AVIKKAL
VATAKARA AMSOM DESOM, VATAKARA TALUK.

BY ADV. SRI.ZUBAIR PULIKKOOL

RESPONDENTS/DEFENDANTS:

1. THAYYIL BEEVI, AGED 59 YEARS
PULLAMKANDATHIL HOUSE, D/O.KADEESSA
VATAKARA AMSOM DESOM, VATAKARA P O
KOZHIKODE DISTRICT, PIN-673 101.
2. NITTOORVEETIL BEEVI, AGED 56 YEARS
D/O.MAMMU, MUKACHERY BAGHAM, VATAKARA AMSOM DESOM
VATAKARA TALUK-673 101.
3. NITTOORVEETIL NAFEESSA, AGED 56 YEARS
D/O.MAMMU, MUKACHERY BAGHAM, VATAKARA AMSOM DESOM
VATAKARA TALUK-673 101.
4. NITTOORVEETIL MUSTHAF A
S/O.MAMMU, 49 YEARS, BUSINESS, VATAKARA.P.O.
VATAKARA AMSOM DESOM, VATAKARA -673 101.
5. NITTOORVEETIL HAMEED
S/O.MAMMU, 48 YEARS, BUSINESS, P.O.VATAKARA
VATAKARA AMSOM, DESOM-673 101.

6. NITOORVEETIL MAIMU, AGED 44 YEARS
D/O.MAMMU, P.O.VATAKARA, VATAKARA AMSOM DESOM
VATAKARA TALUK-673 101.
7. NITOORVEETIL MAJEED
S/O.MAMMU, P.O. 42 YEARS, VATAKARA, VATAKARA AMSOM DESOM
VATAKARA TALUK-673 101.
8. CHOLAMAHAL ENNA VEETIL THAMSAKKUM SUBAIDA
D/O.UPPIRI , 44 YEARS, P.O.PUTHUPPANAM, PUTHUPPANAM AMSOM DESOM
VATAKARA TALUK-673 105.
9. CHOLAMAHAL ENNA VEETIL THAMASIKKUM HARIS, AGED 38 YEARS
S/O.UPPIRI , P.OPUTHUPPANAM, PUTHUPPANAM AMSOM DESOM
VATAKARA TALUK-673 105.
10. CHOLAMAHAL ENNA VEETIL THAMASIKKUM SHAKKEER
S/O.UPPIRI , P.OPUTHUPPANAM, PUTHUPPANAM AMSOM DESOM
VATAKARA TALUK-673 105.
11. THAYYIL KUNHAMINA, AGED 66 YEARS
D/O.KUNHAMMAD, VATAKARA AMSOM DESOM
VATAKARA TALUK-673 101.

THIS REGULAR FIRST APPEAL HAVING BEEN FINALLY HEARD ON 27-10-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ANTONY DOMINIC & P.V.ASHA, JJ.

**C.M.Appln.495 of 2015 &
R.F.A.No.697 of 2015**

Dated this the 27th day of October, 2015

JUDGMENT

Antony Dominic, J.

C.M.Appln.495 of 2015:

This is an application filed to condone the delay of 4304 days in filing the appeal. In the affidavit filed in support of the petition, it has been stated thus:

"I am the 2nd petitioner herein and the 2nd appellant in the above, filed challenging the judgment in O.S.1/2000 on the file of Subordinate Judge, Vatakara. I am filing this affidavit for and on behalf of other petitioners who are the co-appellants in the above. The judgment was pronounced on 16.8.2003. The appeal should have been filed on or before 17.11.2003. The application for copy was filed only on 8.7.2015. The date of calling for the stamp paper was on 21.7.2015 and it was produced on 23.7.2015. The copy was delivered on 25.7.2015. But it could not be collected since I was not doing well. In connection with a back pain I was bedridden. After collecting the copy I was advised to challenge it, since the finding was ultimately effecting the residential right of the petitioners. The facts that plaintiff omitted to claim the house was noticed only after the decree, which altered by the 11th defendants. Then the plaintiff immediately cancel the Power of Attorney by sending the Register notice and made steps to cancel the decree as advised so. The members of the family including the parties to the proceedings interfered and assured that no partition will take place on the basis of the preliminary decree and discussed about the partition out of court. The plaintiff had

resided in the plaint schedule house till her death and the appellants are residing in the house thereafter. The appellants have no house for their own and absolutely here no issues or problem among the appellants and the 11th respondent. Now the 11th respondent has filed final Decree Petition on the basis of the Preliminary decree which they decided to give up. The appellants bonafide believes that the said action is upon the instigation of some other members of the family. Now appellants are advised that to challenge the judgment in the original suit. It is for the said reasons there is 4304 days delay. The delay is caused due to the above said reason and not willful or purposeful. If the delay is not condoned I will be put to untold loss and hardships."

Reading of the above, shows that there is absolutely no explanation for condoning the long and inordinate delay of 4304 days. Therefore, delay petition is dismissed.

R.FA.No.697 of 2015:

In view of the dismissal of the delay petition, the appeal is also dismissed.

Sd/-
ANTONY DOMINIC
JUDGE

Sd/-
P.V.ASHA
JUDGE