

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

THURSDAY, THE 22ND DAY OF JANUARY 2015/2ND MAGHA, 1936

RP.No. 69 of 2015

AGAINST THE JUDGMENT IN O.P.(C).NO. 783/2013, DATED 19-12-2014

ADDRESS OF THE REVIEW PETITIONER(S)/PETITIONER :

K.V.GOPALAN, AGED 69 YEARS,
S/O.LATE VELAYUDHAN, BUSINESS, KUZHIMUNDAYIL HOUSE,
KUMMANODU KARA, PATTIMATTOM VILLAGE, PATTIMATTOM P.O,
KUNNATHUNAD TALUK, ERNAKULAM DISTRICT, PIN- 683 562.

BY ADV. SRI.SHIJU VARGHEESE

ADDRESS OF THE RESPONDENT(S)/RESPONDENTS :

1. NANDINI NARAYANAN, AGED 70 YEARS,
W/O.LATE NARAYANAN, KUZHIMUNDAYIL HOUSE,
KUMMANODU KARA, PATTIMATTOM VILLAGE, PATTIMATTOM P.O,
KUNNATHUNADU TALUK, ERNAKULAM DISTRICT, PIN-683 562.
2. ROSHAN NARAYANAN, AGED 32 YEARS,
S/O.LATE NARAYANAN, KUZHIMUNDAYIL HOUSE,
KUMMANODU KARA, PATTIMATTOM VILLAGE,
KUNNATHUNADU TALUK, ERNAKULAM DISTRICT, PIN-683 562.
3. DEEPA NARAYANAN, AGED 34 YEARS,
D/O.LATE NARAYANAN, KUZHIMUNDAYIL HOUSE,
KUMMANODU KARA, PATTIMATTOM VILLAGE,
KUNNATHUNADU TALUK, ERNAKULAM DISTRICT, PIN-683 562.
4. DEEPTHI NARAYANAN, AGED 36 YEARS,
D/O.LATE NARAYANAN, KUZHIMUNDAYIL HOUSE,
KUMMANODU KARA, PATTIMATTOM VILLAGE, PATTIMATTOM P.O,
KUNNATHUNADU TALUK, ERNAKULAM DISTRICT, PIN-683 562.

BY SRI.VIPIN NARAYAN

THIS REVIEW PETITION HAVING COME UP FOR ADMISSION
ON 22-01-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Msd.

P.BHAVADASAN, J.

R.P. No. 69 of 2015

in

O.P.(C) No. 783 of 2013

Dated this the 22nd day of January, 2015

ORDER

This review petition is directed against the judgment dated 19.12.2014 disposing of O.P.(C) No. 783/2013 wherein this Court had occasion to hold that the decree in question was not void and was valid and binding.

2. In this review petition, the learned counsel appearing for the review petitioner draws strength from the observation made by this Court in Paragraph 19 wherein, it was observed as follows:

“At the time when the judgment was passed accepting the compromise, the suit had not abated.”

The learned counsel went on to point out that death occurred on 31.12.1999 and decree of the court below was passed on 31.03.2000. That was on the 91st day of the death. If there was abatement, the order of this Court

cannot stand.

3. The learned counsel appearing for the respondent then drew the attention of this Court to paragraph 25 of the judgment wherein this Court referred to the decision reported in **Abdul Azeez Sahib v. Dhanabagiammal** [AIR 1983 Madras 5] and the observation therein which reads as follows:

“Generally speaking, a decree passed in favour of a dead person is not a nullity, though a decree passed against a dead person can be construed as a nullity. Even if there is abatement of the suit, that would not make the decree passed in the suit as one without jurisdiction and the executing Court is not entitled to refuse to execute the decree on the ground that the plaintiff was not alive on the date when the decree was passed in his favour.”

4. Even assuming that there is abatement, this Court approved the judgment of the Madras High Court that abatement still cannot nullify the decree and the decree is

continued to valid and binding. Apart from the above fact, the decision did not proceed on that basis alone. This Court also invoked the principles of estoppel, waiver, election and acquiescence to hold against the petitioner. Therefore, the review sought on the basis that the observation that the suit had not abated is even assuming to be wrong, may not be of much help to the petitioner.

For the above reason, this petition is without merits and it is accordingly dismissed.

Sd/-
P.BHAVADASAN
JUDGE

ds

//True copy//

P.A. to Judge