

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

THURSDAY, THE 23RD DAY OF JULY 2015/1ST SRAVANA, 1937

RSA.No. 82 of 2013 ()

AGAINST THE JUDGMENT IN AS 198/2010 of DISTRICT COURT, THALASSERY DATED 18-08-2012.

AGAINST THE JUDGMENT AND DECREE IN OS 37/2001 of PRL.SUBORDINATE COURT, THALASSERY DATED 06-06-2008.

APPELLANTS/APPELLANTS/DEFENDANTS 5 AND 6:

- 1. K.PREMAVALLI, AGED 62 YEARS,
W/O.JANARDHANAN, PREMJAS, TALAP, KANNUR.**
- 2. A.V.RANJITH, AGED 40 YEARS,
S/O.JANARDHANAN, PREMJAS, TALAP, KANNUR
REPRESENTED BY POWER OF ATTORNEY HOLDER JANARDHANAN,
S/O.RAMAN, AGED 70 YEARS, PREMJAS, TALP, KANNUR.**

**BY ADVS.SRI.C.P.PEETHAMBARAN.
SMT.MINI.V.A.**

RESPONDENTS/RESPONDENTS/PLAINTIFF & DEFENDANTS 1 TO 4 :

- 1. THAMBURANKANDY KAMBIL RACHANA, AGED 35 YEARS,
CALTEX, KANNUR-2, KANNUR DISTRICT.**
- 2. THAMBURANKANDY KAMBIL SHOBHA, AGED 69 YEARS,
CALTEX, KANNUR-2, KANNUR DISTRICT.**
- 3. THAMBURANKANDY KAMBIL HAREESHAN,, AGED 74 YEARS,
THAMBURANKANDY HOUSE, TALAP,
KANNUR DISTRICT. PIN-670 001.**
- 4. THAMBURAKANDY KAMBIL VINOD, AGED 66 YEARS,
THAMBURANKANDY HOUSE, TALAP,
KANNUR DISTRICT. PIN-670 001.**
- 5. A.V.JANARDHANAN, AGED 70 YEARS,
S/O.RAMAN, PREMJAS, TALAP,
KANNUR DISTRICT. PIN-670 001.**

R1 BY ADV. SRI.V.RAMKUMAR NAMBIAR.

**R4 BY ADVS.SRI.SHAJI THOMAS,
SRI.K.BABU
SRI.BINU PAUL
SRI.T.V.VINU**

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 23-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

A.HARIPRASAD, J.

R.S.A No.82 of 2013

Dated this the 23rd day of July, 2015.

J U D G M E N T

Appeal filed by supplementary defendants 5 and 6 in a suit for declaration and partition. The respondents are the plaintiffs and defendants 1 to 4 in the suit. According to the plaint averments, the property belonged to the thavazhi of the plaintiff. First defendant is the mother. Defendants 2 and 3 are the brothers of first defendant. Supplementary defendants 4 to 6 are assignees of Tharawad property obtained from mother of defendants 1 to 3. Plaintiff's case is that she was born before the Kerala Hindu Joint Family System Abolition Act, 1976 and therefore she was entitled to get a share in the thavazhi property. It is also contended that though her mother filed a suit for partition in which she was represented by mother, she was very negligent in conducting the case and thereby no property was

allotted to the minor. That is challenged in the subsequent suit.

2. Grievance of the appellants is that they obtained assignment from Ambujakshi on 23-07-1984. In spite of agitating the matter before the court below, there was no direction by the court below to allot the property purchased by the appellants to the share of deceased Ambujakshi.

3. Heard the learned counsel for the appellants and the contesting respondents.

4. Lower appellate court dismissed the appeal finding that no satisfactory reason was shown for condoning delay of 895 days. Consequent to the dismissal of the petition under Section 5 of the Limitation Act, the appeal was also dismissed.

5. Learned counsel for the appellants contended that the order passed by the court below refusing to condone delay is legally unsustainable. According to him, sufficient cause had been shown to condone the delay. The ultimate question is only

about the declaration that the appellants, being the assignees from a sharer of the property, are entitled to get the property set apart to the share of their assignor or not. Whether the property assigned will fit in the share of the assignor or whether it will be in excess of her assignable right is a question of fact, which cannot be decided in this second appeal. Considering the facts and circumstances of the case and also the reasons stated for condonation of delay, I find that the impugned decree and judgment passed by the lower court merely on the ground of delay is unsustainable. Therefore, the impugned decree and judgment are set aside. The matter is remitted back to the lower appellate court wherein, the appellants are permitted to rake up their contentions regarding the allotment of property claimed by them to the share of deceased Ambujakshi. The lower appellate court shall consider whether the claim of the appellants could be allowed on merit or not and whether the contention of the

appellants is barred by any law.

Parties are directed to appear before the court below on
10th August, 2015.

All pending interlocutory applications will stand dismissed.

**Sd/-
A.HARIPRASAD,
JUDGE.**

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P.A to Judge

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