

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

THURSDAY, THE 26TH DAY OF FEBRUARY 2015/7TH PHALGUNA, 1936

RFA.No. 249 of 2014 ()

I.A. NO.583/1991 IN O.S. NO.21/1988 OF SUB COURT, PALAKKAD.

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APPELLANT IN R.F.A./RESPONDENT NO.1 IN I.A. - DEFENDANT NO.1 IN SUIT:-

**A. SRINIVASAN, S/O.A.K.KRISHNAN,
AGED 74, 9/513, THERAPALAYAM,
PUTHUR AMSOM, PALAKKAD, PIN - 678 001.**

**BY ADVS.SRI.P.B.KRISHNAN,
SRI.N.AJITH,
SRI.P.M.NEELAKANDAN,
SRI.P.B.SUBRAMANYAN,
SRI.SABU GEORGE.**

**RESPONDENTS IN R.F.A./PETITIONER & RESPONDENTS 2 TO 5 IN I.A. -
PLAINTIFF & DEFENDANTS 2 TO 5 IN SUIT:-:**

- 1. JAGADAMBAL, D/O.A.K. KRISHNAN,
AGED 79 YEARS, 9/477, THERAPALAYAM,
PUTHUR AMSOM, PALAKKAD, PIN - 678 001.**
- 2. AMBIKA VIJAYAKUMAR, AGED 66 YEARS,
PLOT NO.17, ANJUGAM NAGAR, KOLATHUR,
MADRAS - 600 099, TAMILNADU.**
- 3. JANAKI, W/O.LATE DEVARAJAN,
AGED 75 YEARS, VII/446, KALMANDAPAM,
KOPPAM AMSOM, PALAKKAD TALUK, PIN - 678 001.**
- 4. JAYAKRISHNAN, S/O.JANAKI,
AGED 49 YEARS, VII/446, KALMANDAPAM,
KOPPAM AMSOM, PALAKKAD TALUK, PIN - 678 001.**

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**5. JAYAKUMAR, S/O.JANAKI,
AGED 48 YEARS, VII/446, KALMANDAPAM,
KOPPAM AMSOM, PALAKKAD TALUK, PIN - 678 001.**

**R1 & R2 BY ADVS. SRI.BINOY VASUDEVAN,
SRI.R.MANIKANTAN.
R5 BY ADV. SRI.U.BALAGANGADHARAN.**

**THIS REGULAR FIRST APPEAL HAVING COME UP FOR ADMISSION
ON 26-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

rs.

P.B.SURESHKUMAR, J.

**C.M.Appln.199 OF 2014 &
R.F.A.No.249 OF 2014**

Dated this the 26th day of February, 2015

JUDGMENT

C.M.Appln.119 OF 2014:

This is an application to condone the delay of 2262 days in filing the appeal.

2. Heard the learned counsel for the appellant as also the learned counsel for the first respondent.

3. A few facts as discernible from the materials on record need to be mentioned before considering the question as to the sufficiency of the cause shown by the appellant for the long delay of 2262 days in filing the appeal. The appeal is preferred, challenging the final decree in a suit for partition. The appellant is the first defendant in the suit. A preliminary decree was passed in the suit on 18.12.1990. Later, in the year 1991, the plaintiff filed an application to pass a final decree. In the final decree proceedings, a Commissioner was appointed and the Commissioner filed his report. Though the appellant did not enter appearance in the final

decree proceedings on receipt of notice, in due course, he entered appearance and filed objection to the report of the Commissioner. It is thereafter, the final decree was passed on 11.10.2007.

4. In the affidavit filed in support of the application to condone the delay, it is stated by the appellant that he came to know of the ex parte final decree only in the first week of April 2011. According to him, immediately thereupon he filed an application to set aside the ex parte final decree and the said application was dismissed on 13.11.2013. It is stated by the appellant that the order dismissing the application to set aside the ex parte final decree was challenged by him before this Court in O.P.(C)No.25/14 and the appeal was filed later by way of abundant caution. As the appellant has participated in the final decree proceedings, he cannot be heard to contend that he came to know of the final decree only in the year 2011. The appeal is filed only on 19.3.2014. The explanation offered by the appellant for not filing the appeal for about three years even after he came to know of the final decree is also not satisfactory. In the circumstances, I do not find any ground to condone the delay in filing the appeal. The application to condone the delay, in the circumstances, is dismissed.

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In view of the dismissal of the C.M.Appln.199 OF 2014, this appeal is dismissed.

P.B.SURESHKUMAR, JUDGE

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