

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

FRIDAY, THE 18TH DAY OF SEPTEMBER 2015/27TH BHADRA, 1937

RP.No. 260 of 2015 ()

(AGAINST THE JUDGMENT IN RSA.NO. 641/2005 DATED 9/12/2014)

PETITIONERS/APPELLANTS:

1. ELIKUTTY, W/O VARKEY, AGED 69 YEARS,
AMBATTU HOUSE, P.O.KOODARANHI,
KOODARANJI AMSOM DESOM, KOZHIKODE. (DIED)
2. JOY GEORGE,
S/O.VARKEY, AMBATTU HOUSE,
P.O.KOODARANHI AMSOM DESOM OF KOZHIKODE TALUK.

BY ADV. SRI.M.G.ASHOKAN

RESPONDENTS/RESPONDENTS:

1. JOSE,S/O.VARKEY,
AMBATTU HOUSE, KOODARANHI AMSOM AND DESOM
OF KOZHIKODE.
2. SHALI JOSE, W/O.JOSE,
AMBATTU HOUSE, NOW AT KUMBAPPALLI HOSUE,
KOODARANHI P.O, KOODARANHI AMSOM DESOM,
KOZHIKODE.

R1 & R2 BY ADV. SRI.V.PHILIP MATHEW

**THIS REVIEW PETITION HAVING COME UP FOR ADMISSION
ON 18-09-2015, THE COURT ON THE SAME DAY PASSED
THE FOLLOWING:**

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A.V.RAMAKRISHNA PILLAI, J.

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R.P No.260 of 2015

in

R.S.A No.641 of 2015

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Dated this the 18th day of September, 2015

ORDER

The second petitioner, who is the second appellant in the regular second appeal, is the review petitioner.

2. During the pendency of the regular second appeal, the first appellant died on 19.8.2014. According to the petitioner, the first appellant is survived by the petitioner, the first respondent and another daughter by name Mercy Benny.

3. The regular second appeal came up for hearing on 9.12.2014 and as there was no representation for the appellants and also the reason that the first appellant died on 19.8.2014, and due to want of steps to implead the legal heirs, the appeal was dismissed as abated.

4. In this review petition, the petitioner alleges that on 27.1.2015 he had filed an application to implead the daughter as

additional 3rd respondent and also to record the second appellant and first respondent as legal heirs, along with a petition to condone the delay of 62 days. The same was returned noting the defect that the appeal had already been disposed of 9.12.2014. According to the petitioner, he came to know about the dismissal only when the applications were returned for defects. The petitioner alleges that the cause of action survives so far as the first appellant is concerned and for that reason the appeal can be proceeded with the second appellant on the record as against the respondents.

5. Arguments have been heard.

6. It appears from record that the impugned judgment in the regular second appeal stems out of two appeals i.e. A.S Nos.125 of 2002 and 126 of 2002 which were heard and disposed of by the Subordinate Judge's Court, Kozhikode by common judgment dated 27.1.2005. It is crucial to note that the appellants have been challenging the decision in A.S No.125 of 2002 only. As there is no

challenge against the decree and judgment in A.S No.126 of 2002, the appeal is barred by *res judicata* and no purpose would be served even if the appeal is restored back to file. Therefore, this Courts finds no reason to review the impugned judgment.

In the result, the review petition is dismissed.

Sd/-

A.V.RAMAKRISHNA PILLAI
JUDGE

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