

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

FRIDAY, THE 16TH DAY OF OCTOBER 2015/24TH ASWINA, 1937

RSA.No. 1022 of 2013

**JUDGMENT IN AS 171/2012 AND INTERIM ORDER IN IA.NO.1207/2012 DATED 05-04-2013 OF DISTRICT COURT, PALAKKAD
JUDGMENT DATED 29-03-2012 IN OS 480/2009 OF PRINCIPAL MUNSIF COURT, PALAKKAD**
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APPELLANT(S)/APPELLANTS/DEFENDANTS:

- 1. GANGADHARAN, S/O.KUNNJUVELLA, AGED 63 YEARS,
KONDRIKALAM HOUSE, CHARAKODDE, PALAKKAD.**
- 2. KRISHNANKUTTY, AGED 54 YEARS,
S/O.KUNNJUVELLA, KONDRIKALAM HOUSE, CHARAKODDE,
PALAKKAD.**
- 3. BHAVADAS @ BABU, AGED 44 YEARS,
S/O.LATE KUNNJUVELLA, KONDRIKALAM HOUSE, CHARAKODDE
PALAKKAD.**
- 4. DASAN, AGED 47 YEARS,
S/O.LATE KUNNJUVELLA, KONDRIKALAM HOUSE, CHARAKODDE,
PALAKKAD.**
- 5. KOCHAMMA, AGED 55 YEARS,
W/O.BALACHANDRAN, KONDRIKALAM HOUSE, CHARAKODDE,
PERUVEMBRA, PALAKKAD.**
- 6. KUMARI, W/O.BHASKARAN, AGED 53 YEARS,
KONDRIKALAM HOUSE, CHARAKODDE, PERUVEMBRA,
PALAKKAD.**
- 7. THATHA, W/O.KUNNJUVELLA, AGED 80 YEARS,
KONDRIKALAM HOUSE, CHARAKODDE, PERUVEMBRA,
PALAKKAD.**
- 8. KANDANKUTTY, AGED 49 YEARS,
S/O.LATE KUNNJUVELLA, KONDRIKALAM HOUSE, CHARAKODDE,
PERUVEMBRA, PALAKKAD.**

Msv/

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9. SATHYABHAMA, AGED 59 YEARS,
W/O.LATE CHAMUNNI, KARIPPALIPADAM, CHITHALI,
KUZHALMANNAM, PALAKKAD.
10. SANJEEVKUMAR, S/O.LATE CHAMUNNI, AGED 39 YEARS,
KARIPPALIPADAM, CHITHALI, KUZHALMANNAM,
PALAKKAD.
11. RAJKUMAR,
S/O.LATE CHAMUNNI, KARIPPALIPADAM, CHITHALI,
KUZHALMANNAM, PALAKKAD.
12. REENA, AGED 33 YEARS,
D/O.LATE CHAMUNNI, KARIPPALIPADAM, CHITHALI,
KUZHALMANNAM, PALAKKAD.
13. BEENA, AGED 31 YEARS,
D/O.LATE CHAMUNNI, KARIPPALIPADAM, CHITHALI,
KUZHALMANNAM, PALAKKAD.

BY ADV. SRI.P.K.MOHANAN(PALAKKAD)

RESPONDENT(S)/RESPONDENTS/PLAINTIFFS:

1. NARAYANAN, AGED 69 YEARS,
S/O.MADHAAN @ VELAYUDHAN, KUZHALMANNAM,
THANISSERY PALAKKAD, PIN - 680 701.
2. ARUMUGHAN, S/O.THEETHU, AGED 68 YEARS,
THARIYAKKIDE HOUSE, THANISSERY PALAKKAD, PIN - 680 701.
3. RUGMINI, D/O.VASU, AGED 63 YEARS,
KANNOTTUKALAM, THANISSERY PALAKKAD, PIN - 680 701.

R1 BY ADVS. SRI.R.HARIKRISHNAN
SRI.E.RAMACHANDRAN
SRI.R.UMASANKAR

THIS REGULAR SECOND APPEAL HAVING BEEN FINALLY HEARD ON
16-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

msv/

P.B.SURESH KUMAR, J.

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R.S.A.No.1022 of 2013.

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Dated this the 16th day of October, 2015.

J U D G M E N T

The defendants in a suit for declaration of the co-ownership right of the plaintiffs over the plaint schedule property and consequential injunction, are the appellants in the Second Appeal. The suit was resisted by the defendants. The trial court decreed the suit declaring that the plaintiffs and defendants are entitled to draw water from the pond adjacent to the plaint schedule property to their respective paddy fields. A decree of permanent prohibitory injunction restraining the defendants from obstructing the drawing of water by the plaintiffs from the pond was also passed. The defendants challenged the decision of the trial court in appeal. There was, however, a delay of 63 days in filing the appeal. The appellate court dismissed the delay petition and consequently confirmed the decision of the trial

court. The defendants who are aggrieved by the decision of the appellate court have thus come up in this Second Appeal.

2. Heard the learned counsel for the appellants as also the learned counsel for the respondents.

3. The short question that arises for consideration in the Second Appeal is as to whether the appellate court was justified in dismissing the appeal preferred by the appellants on the ground of delay. I.A.No.1207 of 2012 is the application filed by the appellants before the lower appellate court seeking orders to condone the delay of 63 days in filing the appeal. A copy of I.A.No.1207 of 2012 was made available to me at the time of hearing. It is seen that the affidavit in support of the above interlocutory application has been filed by the first appellant. According to the first appellant, after the decision of the trial court, he was laid up due to viral fever and other physical ailments and consequently he could not contact his

counsel to make necessary arrangements to prefer the appeal on time. The appellate court seems to have taken the view that since there are several defendants in the suit, the reasons stated by the first appellant cannot be accepted as sufficient cause for the delay in filing the appeal. True, the averments made in the affidavit filed in support of the application are too vague and sketchy. There is no statement in the affidavit also to the effect that the first appellant was conducting the case on behalf of other appellants as well. As such, the appellate court cannot be faulted for having taken the view that the cause shown by the appellants cannot be accepted as sufficient cause for the delay in filing the appeal. However, having regard to the facts and circumstances of the case as also the length of the delay, I feel that this is a case where the appellate court should have decided the appeal on merits.

4. In the result, the order on I.A.No.1207 of 2012 in A.S.No.171 of 2012 on the file of the District Court,

RSA.No.1022/2013.

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Palakkad is set aside and the said interlocutory application is allowed. The appellate court shall dispose of the appeal on merits.

The Second Appeal is disposed of as above.

Sd/-
P.B.SURESH KUMAR,
JUDGE.

Kvs/-

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PA TO JUDGE.