

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

WEDNESDAY, THE 17TH DAY OF JUNE 2015/27TH JYAISHTA, 1937

RSA.No. 229 of 2015 ()

AGAINST THE JUDGMENT AND DECREE IN AS NO. 33/2011 of PRINCIPAL SUB
COURT,IRINJALAKUDA DATED 31-10-2014

AGAINST THE JUDGMENT AND DECREE IN OS NO. 1137/2009 of PRINCIPAL MUNSIF
COURT,IRINJALAKUDA DATED 18-01-2011

APPELLANT(S)/RESPONDENT/PLAINTIFF:

SAJEEV, AGED 42, S/O.ADATT GOVINDHANKUTTY NAIR,
KALLUR VILLAGE DESOM, MUKUNDAPURAM TALUK.

BY ADV. SRI.G.SREEKUMAR (CHELUR)

RESPONDENT(S)/APPELLANTS/DEFENDANTS:

1. AYYAPPAN, AGED 71, S/O.INCHODI AYYAPPAN,
KALLUR VILLAGE DESOM, MUKUNDAPURAM TALUK-680001.
2. SREENI, AGED 39, S/O.INCHODI AYYAPPAN, KALLUR VILLAGE
DESOM, MUKUNDAPURAM TALUK-680001
3. SHANI @ SHANAVAS, AGED 36, S/O.INCHODI AYYAPPAN,
KALLUR VILLAGE, DESOM, MUKUNDAPURAM TALUK-680001

R1 TO R3 BY ADV. SRI.P.VISWANATHAN

R1 TO R3 BY ADV. SRI.SUNIL N.SHENOI

THIS REGULAR SECOND APPEAL HAVING BEEN FINALLY HEARD ON
17-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

A.HARIPRASAD, J.

R.S.A. No.229 of 2015

Dated this the 17th day of June, 2015

JUDGMENT

Appeal against the judgment and decree passed by the learned Subordinate Judge, Irinjalakuda in A.S.No.33 of 2011 wherein the trial court's judgment was reversed predominantly for the reason that the respondents did not participate in the hearing.

2. Heard the learned counsel for the appellant and the respondents.

3. At the outset learned counsel for the appellant submitted that the lower appellate court fell into a great error in allowing the appeal for the sole reason that the respondents abstained from the court on various posting dates. Order 41 Rule 17(2) of the Code of Civil Procedure (in short, "CPC") deals with hearing an appeal ex parte. It says that where the appellant appears and the respondent does not appear, the court shall hear the appeal ex parte. It is a fundamental proposition that an appeal cannot be allowed only for the reason that the respondent did not contest the matter before the appellate court. The appellate court can allow the appeal only if the appellant shows sufficient cause for the reversal of the impugned judgment and decree. It may be true that the appellate court can

reverse a judgment and decree of the trial court for reasons other than those stated in the memorandum of appeal, still the power of the appellate court does not extend to allow an appeal merely for the reason that the respondent was absent at the time of hearing. This fundamental rule had been violated by the court below. The lower appellate court failed to note the provision in Order 41 Rule 21 CPC where the respondent could have moved for a rehearing the appeal against whom the appeal was decided *ex parte*. Therefore, the impugned judgment and decree passed by the lower appellate court is legally unsustainable.

In the result, the appeal is allowed. The impugned judgment and decree passed by the Subordinate Judge, Irinjalakuda in A.S.No.33 of 2011 is set aside. The matter is remitted back to the lower appellate court for fresh consideration on merits. Parties are directed to appear before the court below on 20.07.2015.

All pending interlocutory applications will stand dismissed

A. HARIPRASAD, JUDGE.

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