

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

MONDAY, THE 13TH DAY OF JULY 2015/22ND ASHADHA, 1937

RSA.No. 661 of 2015 ()

AGAINST THE JUDGMENT AND DECREE IN AS UNNUMBERED OF 2012 of THE PRINCIPAL
SUB COURT,IRINJALAKUDA DATED 04.03.2015 AND ORDER IN IA NO.5696/2012 IN
A.S.UNNUMBERED OF 2012 OF THE PRINCIPAL SUB COURT, IRINJALAKUDA DATED
15.11.2014.

AGAINST THE JUDGMENT AND DECREE IN OS NO. 1108/2010 of ADDITIONAL MUNSIF
COURT, IRINJALAKUDA DATED 24.09.2011

APPELLANT(S)/APPELLANT/IST DEFENDANT:

DEVAKI, AGED 80,
W/O.NARAYANAN, NELLIPARAMBIL HOUSE
CHIYARAM DESOM & VILLAGE, THRISSUR TALUK
REP.BY POWER OF ATTORNEY HOLDER SUBHASH S/O.VASU, AGED 39,
MANKUZHI HOUSE, OLLUR VILLAGE & DESOM, THRISSUR TALUK.

BY ADVS.SRI.G.SREEKUMAR (CHELUR)
SRI.N.L.BITTO

RESPONDENT(S)/RESPONDENTS/PLAINTIFF AND DEFENDANTS 1 TO 4 AND 6:

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1. SULOCHANA,AGED 62,
D/O.KOCHURAMAN, CHITTISSERY DESOM, INCHODI HOUSE, PAZHAYI,
NEMANIKKARA VILLAGE, MUKUNDAPURAM TALUK
THRISSUR-680001.
 2. SHEKHARAN, AGED 72 ,
D/O.KOCHURAMAN, INCHADI HOUSE, PAZHAYI,
NEMANIKKARA VILLAGE, MUKUNDAPURAM TALUK,
THRISSUR-680001.
 3. VALSALA, AGED 64,
W/O.RAMAKRISHNAN, ALUVAKKARAN HOUSE
PACHALIPURAM DESOM, AMBALLORE VILLAGE
MUKUNDAPRAM TALUK, THRISSUR-680001.
 4. KOUSALYA, AGED 68 ,
W/O.VIYYATHAPPU, THRIKKUR DESOM
KALOOR VILLAGE, MUKUNDAPURAM TALUK, THRISSUR-680001.
 5. RAMANI, AGED 58,
W/O.MADHAVAN, KALAPURAKKAL HOUSE, NEDUPURA DESOM
KATTOOR VILLAGE, MUKUNDAPURAM HOUSE,
THRISSUR-68001.

R1,R3,R4 & R5 BY ADV. SRI.C.A.CHACKO

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON
13-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

A.HARIPRASAD, J.

R.S.A. No.661 of 2015

Dated this the 13th day of July, 2015

JUDGMENT

Appellant is the first defendant in a suit for partition. The suit was decreed exparte. An appeal was filed with a delay of 422 days. The first appellate court dismissed the petition for condonation of delay finding that no satisfactory reason was stated for condoning the delay. Consequently, the appeal was also dismissed.

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

3. Admittedly the appellant was exparte before the trial court. There is no dispute that the appellant is also a sharer entitled to a share in the partible properties. It is the contention of the appellant that though she entrusted the fifth defendant to contest the suit, she did not properly proceed with the case. It is the submission of the appellant that the factum of passing a preliminary decree was not known to her and due to old age, she was laid up and could not contact her lawyer. There was no wilful laches on her part.

4. The contesting respondents opposed the petition contending that no sufficient reason was shown for condoning the delay.

5. Learned counsel for the appellant contended that there is a serious contest in the matter regarding the share to be allotted to the parties. According to the appellant, the plaintiff is not entitled to the extent of share over the properties as claimed in the plaint. Court below dismissed the appeal on technicalities without considering the merits. Even though there was some laches on the part of the appellant in not appearing before the court below and contesting the case, I am of the view that it cannot be qualified as a grave callousness or lethargy. However, I am of the view that the appeal can be allowed on terms and the parties should be afforded an opportunity to contest the matter as adjudication on merit is essential in this case.

6. Courts below did not consider the fact situation correctly and entered into a perverse finding. Therefore, interference is warranted at the hands of this Court in the matter.

In the result, the appeal is allowed. The impugned judgments and decrees passed by the courts below are set aside and the matter is remitted back to the trial court for fresh disposal on merit on condition that the appellant shall pay a cost of ₹3,000/- (Rupees three thousand only) to the contesting respondents within a period of one month from today. The cost can either be paid directly or it can be deposited before the trial court. In that event the court below shall allow the parties to complete the

pleadings and dispose of the matter as expeditiously as possible, at any rate within a period of six months thereafter. The parties shall appear before the court below on 01.08.2015.

All pending interlocutory applications will stand dismissed.

A. HARIPRASAD, JUDGE.

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