

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

MONDAY, THE 30TH DAY OF NOVEMBER 2015/9TH AGRAHAYANA, 1937

RSA.No. 681 of 2015 ()

**AS 15/2009 of DISTRICT COURT, PATHANAMTHITTA
OS 99/2005 of SUB COURT, THIRUVALLA**

APPELLANT/1ST RESPONDENT/PLAINTIFF :

**RADHAKRISHNAN NAIR, AGED 70 YEARS,
THONIPARA VEEDU, ANICADU MURI, ANICADU VILLAGE,
PATHANAMTHITTA DISTRICT.**

BY ADV. SRI.G.SREEKUMAR (CHELUR)

RESPONDENTS/APPELLANTS AND RESPONDENTS 2 TO 4/DEFENDANTS 1 TO 7:

- 1. GOURIAMMA CHELLAMMA
AGED 80 YEARS, PALLIKATUVEETIL, ERATHUVADAKARA MURI,
VELLAVOOR VILLAGE, ANICADU MURI, ANICADU VILLAGE,
PATHANAMTHITTA DISTRICT 697001.**
- 2. USHA
AGED 44 YEARS, D/O.GOURIAMMA CHELLAMMA, PALLIKATUVEETIL,
ERATHUVADAKARA MURI, VELLAVOOR VILLAGE, ANICADU MURI,
ANICADU VILLAGE, PATHANAMTHITTA DISTRICT 679 001.**
- 3. GEETHA
AGED 40 YEARS, D/O.GOURIAMMA CHELLAMMA, PALLIKATUVEETIL
ERATHUVADAKARA MURI, VELLAVOOR VILLAGE, ANICADU MURI
ANICADU VILLAGE, PATHANAMTHITTA DISTRICT 679 001.**
- 4. VINOD
AGED 45 YEARS, S/O.GOURIAMMA CHELLAMMA, PALLIKATUVEETIL
ERATHUVADAKARA MURI, VELLAVOOR VILLAGE, ANICADU MURI
ANICADU VILLAGE, PATHANAMTHITTA DISTRICT 679 001.**
- 5. JAGADAMMA
AGED 75 YEARS, THONIPARA VEEDU, ANICADU MURI
ANICADU VILLAGE, PATHANAMTHITTA DISTRICT - 697001.**
- 6. KRISHNA PILLAI SIVADASAN PILLAI,
AGED 65 YEARS, PARAYATHU VEEDU, KUNNAMTHANAM MURI
KAVIYURVILLAGE, PATHANAMTHITTA DISTRICT - 679 001.**

**BY ADV, SMT. THANKAMMA
R1 BY ADV. SRI.M. NARENDRA KUMAR**

**THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION
ON 30-11-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

P.B.SURESH KUMAR, J.

R.S.A.No.681 of 2015

Dated this the 30th day of November, 2015

JUDGMENT

The plaintiff in the suit is the appellant in the second appeal.

2. The suit was filed seeking, among others, a decree to set aside the decree and judgment in an earlier suit namely, O.S.No.423 of 1982. The suit was decreed by the trial court. The fourth defendant took up the matter in appeal. The appellate court took the view that since the plaintiff was a party to O.S.No.423 of 1982, his remedy is to prefer an application under Order IX Rule 13 of the Code of Civil Procedure and consequently, allowed the appeal and set aside the decision of the trial court. The plaintiff, who is aggrieved by the decision of the appellate court, has thus

come up in the second appeal.

3. Heard the learned counsel for the appellant.

4. The case of the plaintiff is that he was not served with summons in O.S.No.423 of 1982. The said situation is taken care of in Order IX Rule 13 of the Code of Civil Procedure. As such, the appellate court cannot be faulted for having relegated the plaintiff for remedy under Order IX Rule 13 of the Code of Civil Procedure. There is, therefore, no merit in the second appeal and the same is, accordingly, dismissed.

P.B.SURESH KUMAR, JUDGE.

smm