

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

TUESDAY, THE 1ST DAY OF SEPTEMBER 2015/10TH BHADRA, 1937

SA.No. 29 of 2000 (Y)

AS 35/1998 of SUB COURT, THIRUVALLA DATED 06-08-1999

OS 232/1994 of MUNSIFF COURT, THIRUVALLA DATED 31-10-1997

APPELLANTS/APPELLANT/DEFENDANT:

- 1. STATE OF KERALA, REPRESENTED BY THE
DISTRICT COLLECTOR, PATHANAMTHITTA.**
- 2. ASSISTANT EDUCATIONAL OFFICER,
THIRUVALLA.**

BY GOVERNMENT PLEADER SMT.LILLY LESLIE.

RESPONDENT/RESPONDENT/PLAINTIFF:

**PUTHAMBALATHU DEVASWOM, MEPRALKARA,
PERINGARA VILLAGE, THIRUVALLA TALUK,
REPRESENTED BY K. PANKAJAKSHAN NAIR,
KUNNATHU PUTHENPURAYIL, MEPRAL PERINGARA
VILLAGE, MEPRAL KARA.**

BY ADV. SRI.P.R.VENKETESH

**THIS SECOND APPEAL HAVING BEEN FINALLY HEARD ON 01-09-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

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P.BHAVADASAN, J.

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S.A No.29 of 2000

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Dated this the 1st day of September, 2015

J U D G M E N T

The State, aggrieved by the dismissal of the appeal A.S.No.35/1998 before the Sub Court, Thiruvalla on the ground of delay, has come up before this Court.

2. The plaintiff Devaswom instituted a suit for injunction. The plaint schedule is a portion of 22 cents of land which is lying as a contiguous plot along with the other property owned by Devaswom. Devaswom claimed that it had put up a building in the plaint schedule property and given it on licence to the Travancore Government to run a primary school on a clear and definite understanding and condition that when the school stops functioning or ceases to function, the Government will vacate the property. To cut the long story short, the plaintiff claimed that by 1965, the functioning of the school came to a standstill. The

Government is alleged to have acquired an alternate site and put up a building thereon and running a school therein. The dilapidated portion of the building was also removed by the contractor engaged by the Government. The plaintiff claimed that by virtue of a notice dated 9.11.1992, the licence was terminated and thereafter the Government has no right to occupy the property. On the basis of these allegations, the suit was laid.

3. The suit was resisted by the State for want of notice under Section 80 of the Code of Civil Procedure. They contended that plaintiff has not produced any document to show their right over the the property. They claimed that they were in absolute possession and enjoyment of the property and disputed almost all the allegations in the plaint. They also contended that the building then in the property was reconstructed by the Government and later on, when the building became dilapidated, the school had to stop functioning. In other words, the contention is that they

are not bound to vacate the premises and that they are entitled to continue to be in possession of the property.

4. On the above pleadings, issues were raised. The evidence consists of the testimony of PWs.1 to 3 and the documents marked as Exts.A1 to A3 from the side of the plaintiff. The court examined CW1 as Court witness and Exts.C1 and C1(a) were marked. The defendants did not adduce any evidence.

5. Taking note of the inconsistency in the pleadings and lack of evidence to show that the defendants had any right other than what is alleged by the plaintiff, the suit was decreed.

6. The aggrieved State preferred the appeal. There was a delay of 43 days in filing the appeal. Hence, they filed I.A No.670/1998 to condone the delay. The lower appellate court having found that the State was unable to show any sufficient cause to condone the delay, dismissed the petition. Consequently, the appeal was also dismissed.

Hence this second appeal.

7. Notice was issued on the following substantial questions of law raised in the memorandum of appeal:

(a) In the facts and circumstances of the case whether the lower Appellate court was justified in dismissing the appeal on the ground of delay in the light of the decision of the Supreme Court reported in AIR 1987 SC 1352?

(b) Whether the suit is not maintainable for want of notice under Section 80 and for want of permission of the Court under Section 82(2) of the Civil Procedure Code?

8. The rival contentions have already been adverted to. It cannot be disputed that there is no decision on merits in the case by the lower appellate court. The delay was only 43 days, which on a reading of the order of court below, appears to be satisfactorily explained, even though the lower appellate court thought otherwise. At any rate, no harm would have been caused by having the matter

heard on merits.

In the light of the rival contentions, the court below ought to have condoned the delay, taken the appeal on file and decided it on merits. One should remember that, the lower appellate court is the final court on facts. For the above reasons, the appeal is allowed and the impugned order and decree are set aside and I.A.No.670/1998 in A.S.No.35/1998 is allowed. The lower appellate court is directed to take A.S.No.35/1998 on file and dispose it of on merits. The parties shall appear before the court below on 5th October, 2015. The court below shall make every endeavour to dispose of the appeal as expeditiously as possible, at any rate, within a period of 'three' months from the date of appearance of the parties.

Sd/-

P.BHAVADASAN, JUDGE.

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P.A to Judge