IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE SHIRCY V.

TUESDAY, THE 22ND DAY OF DECEMBER 2020 / 1ST POUSHA, 1942

OP(C).No.1153 OF 2020

AGAINST THE ORDER/JUDGMENT IN OS 74/2014 OF ADDITIONAL SUB COURT, PALAKKAD

PETITIONERS:

1 T.G.GIRISH BABU
AGED 53 YEARS
S/O. K.G.MARAR (LATE), SREE KRISHNA APARTMENT,
VAIDHYANATHAPURAM, AMBIKAPURAM,PALAKKAD DISTRICT

2 SURYAJITH.V.G.
AGED 11 YEARS
S/O. GIRISH BABU, SREE KRISHNA APARTMENT,
VAIDHYANATHAPURAM, AMBIKAPURAM, PALAKKAD
DISTRICT(MINOR REP BY GUARDIAN -FATHER 1ST
PETITIONER)

BY ADV. SRI.RAJESH SIVARAMANKUTTY

RESPONDENTS:

1 K.KAMALAKSHY AMMA, AGED 80 YEARS,
W/O.LATE KRISHNAN NAIR,RESIDING AT CHITHRASOUDAM,
THOLANUR, NINAVIL, PALAKKAD DISTRICT,PIN-678 722

2 KANJANA, AGED 60 YEARS
W/O. UNNIKRISHNAN,RESIDING AT CHITHRASOUDAM,
THOLANUR, NINAVIL, PALAKKAD DISTRICT,PIN-678 722

3 SULOJANA
W/O. LATE VENU, RESIDING AT CHITHRASOUDAM, THOLANUR,
NINAVIL, PALAKKAD DISTRICT, PIN-678 722

4 CHANDRIKA,
W/O. LATE GOPI,RESIDING AT CHITHRASOUDAM, THOLANUR,
NINAVIL, PALAKKAD DISTRICT, PIN-678 722

THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 22.12.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 22nd day of December 2020

The petitioners are the plaintiffs in O.S.No.74/2014 on the file of the Additional Sub Court, Palakkad.

2. The suit filed by the petitioners was dismissed for default on 04.01.2019 as they remained absent when the case was listed for trial. Thereafter, a petition under Order 9 rule 9 was filed as I.A.No.439/2019. The same was considered by the Additional Sub Judge and a conditional order was passed directing these petitioners to deposit a sum of Rs.4,000/- within a period of ten days. They have not complied with the said order but filed CMA No.87/2019 challenging the said order. But that also resulted in dismissal and now these petitioners are before this Court seeking a direction to permit them to deposit the amount before the court below with this petition under Article 227 of the Constitution of India.

3. Notice was issued to the respondents 1 to 4, though they accepted the notice they choose to remain absent before this Court.

4. Heard the learned counsel for the petitioners.

5. Of course the suit is one for partition but it could be seen that they have not complied with the direction of the court below to deposit the amount for restoration of the suit which was dismissed for default when it was posted for trial by including the same in the list. Still I think that it would be appropriate to pass an order in favour of these petitioners to have a verdict on merits, in the interest of justice but certainly that can only be on payment of cost more than what is imposed by the court below, as much inconvenience has been caused to the opposite side. The court below shall allow the petition filed as I.A.No.439/2019 in O.S.No.74/2014 provided a sum of Rs.6,000/- is deposited before the court below within a week from the date of re-opening of the courts.

It is made clear that at any rate the amount has to be deposited on or before 11.01.2021 before the court below. If the said amount is deposited within the time stipulated above, the court

below shall take back the case on file and proceed with the matter in accordance with law with notice to the opposite parties.

The Original Petition is disposed of accordingly.

Sd/-

SHIRCY V.

JUDGE

mpm

APPENDIX

PETITIONERS' EXHIBITS:

EXHIBIT P1	**TRUE COPY OF THE ORDER DATED 7.8.2019 IN IA NO.439/2019 IN OS NO.74/2014 PASSED BY THE ADDITIONAL SUB COURT, PALAKKAD.**
EXHIBIT P2	**TRUE COPY OF THE JUDGMENT DATED 30.9.2019 IN CMA NO.87/2019 PASSED BY THE DISTRICT COURT, PALAKKAD.**

// TRUE COPY //
P.A. TO JUDGE