

IN THE COURT OF DISTRICT JUDGE, ERNAKULAM

Present:

Smt.Honey M.Varghese, District Judge

Wednesday, the 13th day of September, 2023/22nd Bhadra, 1945

I.A No.1 of 2023 in A.S.No. 02 of 2023

Petitioners/Appellant:-

1. Rajamma, aged 51 years, W/o.I.C. Bose, Ithitharayil House, Palluruthy Village, Kochi, Ernakulam District.
 2. Sobha, aged 48 years, D/o. Late Paramu, Valiyapurakkal House, Njarackal Village, Kochi, Ernakulam District.
- By Advs. Suraj Krishna B.S. & Sandeep P.S.

Respondent/Respondent in FDA:-

1. P.V. Baby (Died on 13.03.2020), aged 55 years, S/o. Late Paramu, Valiyapurakkal House, Njarackal Village, Kochi, Ernakulam District.

Additional Respondents:-

2. Suvarna, aged 53 years, W/o.Late P.V. Baby, Suchitra Pulpara House, Panangad P.O., Ernakulam District.
3. Favia V. B., aged 26 years, D/o. Late P.V. Baby, Suchitra Pulpara House, Panangad P.O., Ernakulam District.
4. Akshay Baby, aged 23 years, S/o.Late P.V. Baby, Suchitra Pulpara House, Panangad P.O., Ernakulam District.

By Advs. A. Balagopalan, A. Rajagopalan, Sandhya C. Nair,
Rahul K. Pradeep, M.N. Manmadhan & Babilu Baby.

This petition is filed under Section 5 of the Limitation Act, praying this court to condone the delay of 579 days occurred in preferring the Appeal.

This petition is coming on for hearing before me on 07.09.2023 and the court on 13.09.2023, passed the following:-

ORDER

This is an application filed by the petitioner under section 5 of the Limitation Act to condone the delay of 579 days in filing the above appeal.

2. The above appeal is filed against the judgment and decree passed in F.D.A No. 245/15 in O.S 86/11 dated 1/2/2019. The trial court allotted plot A

to the respondents 2 to 4 and plot D to the petitioner. The petitioner in FDA is died. After his death, his legal representatives filed execution petition for getting plot A to them jointly as per the final decree. After filing Execution petition the Addl.respondents 2 to 4 are making arrangements for sale of the Plot A- property. The petitioners have an emotional attachment to that land as both of their parents were cremated in that property. They had initiated mediation talks to make them amenable to swap their plot A with the plot D belonged to the petitioners. The appeal ought to have been filed on or before 21/3/2019. The delay of 1385 days have occurred in preferring the appeal from the final decree. In between 806 days, the period starting from 15/3/22 to 29/5/22 stands excluded by virtue of the directions of Hon'ble Supreme Court of India in SM No. 3/2020 due to covid pandemic. Hence, excluding the period during which the operation of Law of Limitation is suspended, a delay of 579 days have occurred in preferring the appeal. The delay is not willful or deliberate, and that may be condoned.

3. Notice served on respondents.

4. R2 to R4 appeared through counsel and filed objection. They stated that the above petition is filed with an intention to drag the matter and mislead the court by stating false covid reasons.

5. Heard both sides and perused the records.

6. It can be seen from the affidavit that the appeal is preferred against the judgment and decree in Final decree application. The petitioners initiated several rounds of talks to make them amenable to swap

plot A obtained by the respondents with the plot D of the petitioners. But, the respondents are trying to alienate the plot A property to outsiders. So, they preferred the appeal. The basic principle is that no party is supposed to take benefit out of the delayed filing. At the very same time, it is to be borne in mind that Section 5 of the Limitation Act is introduced with an intention to consider the matters meritoriously than technically. Though objection is filed through counsel disputing case stated in the petition, considering the object behind the Limitation Act that the matter is to be considered on merits than technically, the reason stated by the petitioner is accepted and delay is condoned. The injury caused to the other side is also to be considered. This can be addressed by giving cost to the respondents. Hence, I am of the view that the delay in filing the above appeal is liable to be condoned in the interest of justice on payment of cost of ₹2,500/- to the respondents on payment of cost of ₹2,500/- to the respondents.

In the result, petition is allowed. The delay in filing the above appeal is hereby condoned on payment of cost of Rs.2,500/- to the respondents on or before 25.09.2023..

Dictated to the confidential Asst. transcribed and typed by her, corrected and pronounced by me in open court on this the 13th day of September, 2023.
Sd/-

Honey M.Varghese
District Judge

sk/-
Comp.by:

I.A No.1 of 2023 in
A.S.No. 2 of 2023
Order Dated: 13.09.2023