

IN THE COURT OF THE MUNSIFF-MAGISTRATE OF PONNANI
Present:- Smt. Sowmya T.M., Munsiff- Magistrate, Ponnani.

Tuesday, the 22nd day of October, 2024
the 30th day of Aswina, 1946

INTERLOCUTORY APPLICATION (R .P) No. 2/2021
AND INTERLOCUTORY APPLICATION No.2/2021
IN ORIGINAL SUIT No. 321/2015

Between:-

- 1 (*) Chakkachan (Died), 75 years, S/o.Madambi,
Kololambu amsom, desom, Ponnani Taluk
- 2 Malukuty, 67 years, W/o.Chakkachan,
Kunnathuvalappil House, Kololambu amsom,
desom, Ponnani Taluk
- 3 Padmini, 47 years, W/o.Raveendran,
Kuruvathodi veedu, Kololambu amsom, desom,
Ponnani Taluk

Suppl. Children:

- 4 (*) Shaji, 37 years, S/o.(Late) Chakkachan,
Kunnathu valappil House

: Petitioners/
Plaintiffs

Suppl. Bindu, 35 years, D/o.(Late) Chakkachan,
5 (*) Kunnathu valappil House

Suppl. Rahul, 23 years, S/o.Jayalakshmi, Kunnathu
6 (*) valappil House

Suppl. Rohit, 24 years, S/o.Jayalakshmi, Kunnathu
7 (*) valappil House

(Kololambu amsom, desom, Ponnani Taluk)

***(*) (Impleaded and amended as per order in IAs 12/23
and 13/23 dated 16-01-2024)***

Munsiff-Magistrate

And:-

1. (**) Appunni (Died), 65 years, S/o.Odathuvalappil Panangadan
- 2 Abdulla, 65 years, S/o.Kurinjalavil Kunjimoidu
- 3 Achuthan, 72 years, S/o.Chempilpadi Thupran
- 4 Gopalan, 63 years, S/o.Chempilpadi Thupran
(Kolalambu amsom, desom, Ponnani Taluk)

Suppl. Thanka, 56 years, W/o.Deceased Appunni,
5 (**) Odathuvalappil, Kolalambu amsom, desom,
Ponnani Taluk

: Respondents/
Defendants

Suppl. Children, Rajeev, 36 years, Odathuvalappil,
6 (**) Kolalambu amsom, desom, Ponnani Taluk

Suppl. Anila, 34 years, Odathuvalappil, Kolalambu
7 (**) amsom, desom, Ponnani Taluk

Suppl. Anoop, 32 years, Odathuvalappil, Kolalambu
8(**) amsom, desom, Ponnani Taluk

***(**) (Impleaded and amended as per order in IAs 04/21
and 5/21 dated 16-01-2024)***

These petitions coming on this day for final hearing before me in the presence of Sri.C.Anil, Advocate for the Petitioners/Plaintiffs and Sri.P.N.Sujeer, Advocate for the Respondents/Defendants No.2, 6 to 8 and Smt.Deepthi.C, Advocate for the Respondents/Defendants No.3 and 4 and this Court passed the following:-

COMMON ORDER

The plaintiffs in the above suit filed the petition to set aside the order of dismissal dated 13-02-2020 under Order IX Rule 4 of the Code of Civil

Procedure. The defendants and the legal heirs of the first defendant were shown as the respondents in the above petition.

2. The amended petition averments in RPIA 2 of 2021, in brief, are as follows: The first plaintiff was the husband of the second petitioner. He was conducting the suit. Subsequently, the leg below the knee of the first plaintiff was amputated due to Gangrene. The first plaintiff was bedridden during the suit proceedings. The suit was posted for trial on 13-02-2020. So, the petitioners filed IA 3 of 2020 to adjourn the trial of the suit with medical records, which was dismissed by the court. The petitioners have serious contentions in the above suit. The first plaintiff died on 30-09-2020. There were no willful latches on the part of the petitioners in conducting the suit. So, the dismissal order may be set aside, and the suit may be restored to the court's files.

3. The other legal heirs of the first plaintiff impleaded as supplemental petitioners No.4 to 7. During the pendency of the proceedings, the first respondent also died. His legal heirs were impleaded as supplemental Respondents No.5 to 8.

4. Respondents No.3, 4 and 6 to 8 appeared before the court. The second and the fifth respondents did not turn up before the court despite due service of notice. Respondents No.6 to 8 filed a counter statement and opposed the application. They contended as follows:

5. The above petition is not maintainable under Order 9 Rule 4 of CPC. There are no bonafides in the above petition. There were three plaintiffs in the above. The petitioners took inconsistent pleas in IA 4 of 2021. The petitioners filed the above petition seven months after the suits dismissal date. The petitioners have not stated the date on which the first plaintiff's leg was amputated. The petitioners have not stated sufficient reasons to set aside the order of dismissal in the suit. Therefore, the above petition is liable to be dismissed with costs.

6. The following point arises for determination.

1. Is the dismissal order dated 03-02-2020 liable to be set aside?

7. IA 2 of 2021

The plaintiffs in the above suit and the children of the first and the second plaintiffs filed the petition to set aside the decree in counterclaim in the above suit. The counter-claimants, who were the defendants and the legal heirs of the first defendant in the above suit, were shown as the respondents in the above petition.

8. The amended petition averments in IA 2 of 2021, in brief, are as follows: The first plaintiff was the husband of the second petitioner. He was conducting the suit for and on behalf of the other two plaintiffs and for himself. The first respondent and the second respondent, who were the defendants in

the above suit at the time instituting the suit, had filed a counterclaim. Subsequently, the leg below the knee of the first plaintiff was amputated due to Gangrene. The first plaintiff was bedridden during the suit proceedings. The suit was posted for trial on 13-02-2020. So, the petitioners filed IA 3/2020 to adjourn the trial of the suit with medical records, which was dismissed by the court. The petitioners have serious contentions in the above counter claim. The first plaintiff died on 30-09-2020. IA 4/2020 was also filed to remove the case from the list. IA 4/2020 was also dismissed by the court. The court dismissed the suit on 13-02-2020, and the counterclaim was decreed on 24-02-2020. There were no wilful latches on the part of the petitioners in conducting the suit. So, the exparte decree in the counterclaim may be set aside, and the counterclaim may be restored to the court files.

9. During the pendency of the suit proceedings, the first respondent died. His legal heirs were impleaded as supplemental Respondents No.3 to 6. Though Respondents No.2 to 6 appeared through counsel, they did not file any counter statement.

10. The point that arises for consideration:

1. Is the decree in the counterclaim liable to be set aside?

11. Neither the petitioners nor the respondents adduced any oral or documentary evidence. However, the petitioner produced a book on palliative care for patients issued by Samagra Home Care Centre, Edappal.

12. I heard both sides.

13. Points in RPIA 2/2021 and in IA 2/2021:

As the facts are interrelated, these two points can be considered together for brevity and to avoid repetition.

14. The first contention of the respondents was that the suit was dismissed on default due to the non-appearance of the petitioners when the matter was listed for trial. Therefore, the petitioners are not entitled to relief under Order 9 Rule 4 of the Code of Civil Procedure. It is well settled that misquoting of provision is not grounds for rejecting the relief put forth by the petitioners. Hence, more significance cannot be given to this contention.

15. According to the petitioners, the suit was conducted by the first plaintiff. Since he was bedridden, he could not conduct the case. The petitioners submitted that the first plaintiff's leg was amputated due to Gangrene, and he was totally laid up. The second petitioner, who was his wife, could not appear before the court as her presence with the first plaintiff was necessary since he was bedridden.

16. It is to be noted that there were three plaintiffs at the time of instituting the suit. The petition is silent about what prevented the third petitioner in conducting the above suit. The treatment records issued by the Palliative Care Centre would show that the plaintiff's leg (below the knee) was amputated in 2018.

17. The records of the suit would prove that the suit was listed for trial on 03-02-2020. The petitioners filed IA 3 of 2020 to remove the case from the list. The court dismissed the petition upon a finding that the discharge summary of the first plaintiff would show that the first plaintiff was discharged from the hospital on 28-01-2019 and that there were no bonafides in the submission that the petitioners were not in a position to appear before the court on the date of trial.

18. The petitioners admitted that the first plaintiff died, seven months after the date of the suit listed for trial. The petitioners have not said anything as to what prevented them from taking out a commission to record the evidence of the first plaintiff. The suit was dismissed on 13-02-2020, and the counterclaim was decreed on 24-02-2020. The suit is in the year of 2015. The records revealed that the petitioners were not ready to adduce evidence. The reasons stated in the above petition are also found unsatisfactory.

19. Indeed, Order IX, R.9 of the Code provides that a decree against the plaintiff by default bars the fresh suit. As per sub-rule (1) of R.9, where a suit is wholly or partly dismissed under R.8, the plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of action. But he may apply for an order to set the dismissal aside, and if he satisfies the court that there was sufficient cause for his non-appearance when the suit was called on for hearing, the court shall make an order setting aside the dismissal upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit.

20. The assertions of the petitioners in the affidavit filed in support of his applications were categorically denied by the respondents by filing a counter statement. It was the burden of the petitioners to adduce evidence to prove that their contentions were true and that there really existed reasons preventing them from appearing in court when the suit was listed for trial. In the absence of any evidence, even by taking the most liberal approach, it cannot be found that there was sufficient cause for the non-appearance of the petitioners. In that view of that matter, if the applications are allowed, that will amount to dragging the respondents to endless litigation and total injustice to them. In such circumstances, I am of the considered view that these petitions are devoid

of any merits, so the petitions are liable to be dismissed. Hence, both these points are found against the petitioner.

In the result,

RPIA 2/2021 and IA 2/2021 are dismissed.

(Dictated to the Confl. Assist, transcribed by her, corrected by me, and pronounced in Open Court this the 22nd day of October 2024).

Munsiff-Magistrate

Appendix: Nil

Munsiff-Magistrate