

IN THE COURT OF THE SUBORDINATE JUDGE (ADDL) OF PALAKKAD

Present: Smt.Devika Lal, Additional Sub Judge.

Friday, the 21st day of July, 2023
(30th day of Ashadha 1945 S.E.)

INTERLOCUTORY APPLICATION (RESTORATION) No.2233/2022
IN ORIGINAL SUIT No.08/2002

Petitioners/Defendant Nos.2 to 5 :

1. Karuppaswamy Pillai (Died)
2. Krishnankutty, aged 65 years, S/o.Karuppuswamy Pillai, Pittupparayil, Chithali amsom, Alathur Taluk, Palakkad District.
3. Ramachandran, aged 68 years, S/o.Karuppuswamy Pillai, residing at Sivani Nagar, Para Road, Kanjikkode amsom, Palakkad Taluk.
4. Thankamma Amma, aged 86 years, W/o.Karuppuswamy Pillai, Pittupparayil, Chithali amsom, Alathur Taluk, Palakkad District.
5. Sarojini alias Padmavathi, aged 70 years, D/o.Karuppuswamy Pillai, Nechikkalkkattil, Chithali amsom, Alathur Taluk, Palakkad District.
6. Pushpalatha.

Vs.

Respondents/Plaintiffs :

1. Sinkaran (Died)
2. Nagarathnam, aged 70 years, W/o.Late Sinkaran, Pazhaya Kammathil, Chithali amsom, Alathur Taluk, Palakkad District.
3. Suresh, aged 48 years, S/o.Late Sinkaran, Pazhaya Kammathil, Chithali amsom, Alathur Taluk, Palakkad District.
4. Sujatha, aged 45 years, D/o.Late Sinkaran, Pazhaya Kammathil, Chithali amsom, Alathur Taluk, Palakkad District.
5. Krishnaveni, aged 42 years, D/o.Late Sinkaran, Pazhaya Kammathil, Chithali amsom, Alathur Taluk, Palakkad District.
6. Vijayalakshmi, aged 40 years, D/o.Late Sinkaran, Pazhaya Kammathil, Chithali amsom, Alathur Taluk, Palakkad District.

The above petition coming on this day for final hearing before me in the presence of Sri.V.Ramakrishnan Advocate for petitioners and Sri.C.Mohanram & Sri.M.Raveendran, Advocates for R2 to R6; R1 died; and this Court passed the following:-

ORDER

This is the order in the above petition filed under Order IX Rule 13 of The Code of Civil Procedure, 1908 to set aside the ex-parte decree dated 30.11.2020 passed in the above O.S. The petitioners and the respondents herein were the defendants and the plaintiffs respectively in the above suit.

2. The petition averments, in brief, are as follows:- The above suit was decreed *ex-parte* on 30.11.2020. There was no willful default on the part of the petitioners in not appearing before this Court. Due to the Covid pandemic, the petitioners could not appear before the Court. When the petitioners received the notice in E.P No.345/2021, they came to know about the *ex-parte* decree against them. The defendant no.6 died on 14.12.2017 and the said fact was suppressed by the respondents during the trial of the above suit and they had obtained the

ex-parte decree. Hence the said decree is not maintainable and the *ex-parte* decree in the above suit may be set aside.

3. The respondent no.1 died during the suit and his heirs were already impleaded. On receipt of notice, the respondents no.2 to 5 filed a common counter in which it is stated as follows:- The reason of Covid pandemic stated in the petition is false. There was no suppression on the part of the respondents as alleged in the petition. The learned Counsel for the petitioners had not submitted about the death of defendant no.6 before the Court or the Land Tribunal. The petition was filed only for dragging the execution proceedings. Hence the petition may be dismissed with costs.

4. Heard both sides.

5. The points that arise for determination are as follows:-

(i) Whether the prayer is allowable?

(ii) What is the order as to costs?

6. **Point No.(i):** The delay condonation petition vide I.A No. 1/2022 filed in the above R.P.I.A is dismissed vide order dated 21.07.2023. Hence the above petition is also dismissed accordingly. This point is found against the petitioners.

7. **Point No.(ii)**:- As far as the costs of the petition is concerned, I find no reason to deviate from the normal rule and hence the costs shall follow the event. This point is found accordingly.

In the result, the petition is dismissed with costs.

(Dictated to the Confidential Assistant, typed by her in Office Computer, corrected and pronounced by me in Open Court, on this the 21st day of July, 2023)

Additional Sub Judge
Palakkad

APPENDIX: Nil

Additional Sub Judge
Palakkad

Typed by : Sajitha.R
Compared by : Sahadevan.M

Fair/Copy of Order
in RPIA No.2233/2022
in OS No.08/2002
Dated: 21.07.2023