



2025:KER:30719

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE M.A.ABDUL HAKHIM

TUESDAY, THE 8TH DAY OF APRIL 2025 / 18TH CHAITHRA, 1947

RSA NO. 227 OF 2025

**AGAINST THE ORDER AND JUDGMENT DATED 24.10.2024 IN
AS NO.19 OF 2021 OF ADDITIONAL DISTRICT COURT & SESSIONS
COURT-II, NORTH PARAVUR ARISING OUT OF THE JUDGMENT AND
DECREE DATED 26.09.2017 IN OS NO.283 OF 2007 OF MUNSIF
COURT, ALUVA**

APPELLANT(S)/APPELLANT/DEFENDANTS 1, 7 AND 8:

- 1 K.P.JOY
AGED 60 YEARS
S/O. VARGHESE, KUNNAPILLY HOUSE,
ANGAMALY KARA AND VILLAGE, ALUVA TALUK,
ERNAKULAM DISTRICT., PIN - 683581**
- 2 DAVIS
AGED 50 YEARS
S/O. KUNJAVARA, MOONJEELY HOUSE,
ANAPPARA P.O., MANJAPRA VILLAGE,
ALUVA TALUK, ERNAKULAM DISTRICT.,
PIN - 683581**
- 3 LINCY
AGED 47 YEARS
W/O. DAVIS, MOONJEELY HOUSE, ANAPPARA P.O.,
MANJAPRA VILLAGE, ALUVA TALUK,
ERNAKULAM DISTRICT, PIN - 683581**



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BY ADVS.
P.B.SUBRAMANYAN
SABU GEORGE
B.ANUSREE
MANU VYASAN PETER
MEERA P.

**RESPONDENT(S)/RESPONDENTS/PLAINTIFF AND
DEFENDANTS 2 TO 6:**

- 1 MARTIN
 S/O. VARIYATH, PANIKULAM HOUSE, VADAKKUMBHAGAM
 KARA, MANJAPRA VILLAGE, ALUVA TALUK, ERNAKULAM
 DISTRICT, PIN - 683581
- 2 MEERABHAI
 AGED 67 YEARS
 W/O. GOPALAKRISHNAN NAIR, KUNNATHU HOUSE,
 VADAKKUMBHAGAM KARA, MANJAPRA VILLAGE, ALUVA
 TALUK, ERNAKULAM DISTRICT, PIN - 683581
- 3 SUNIL
 AGED 41 YEARS
 S/O. RADHAMANI, VELIYATHU HOUSE, VADAKKUMBHAGAM
 KARA, MANJAPRA VILLAGE, ALUVA TALUK, ERNAKULAM
 DISTRICT, PIN - 683581
- 4 ANITHA
 AGED 38 YEARS
 D/O. RADHAMANI, VELIYATHU HOUSE, VADAKKUMBHAGAM
 KARA, MANJAPRA VILLAGE, ALUVA TALUK, ERNAKULAM
 DISTRICT, PIN - 683581
- 5 CHANDRAMATHI
 AGED 66 YEARS
 D/O. SANKARAN NAIR, VELIYATHU HOUSE,



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**VADAKKUMBHAGAM KARA, MANJAPRA VILLAGE,
ALUVA TALUK, ERNAKULAM DISTRICT,
PIN - 683581**

**6 K.G.REJANI
AGED 54 YEARS
D/O. GOPALAKRISHNAN NAIR, KUNNATHU HOUSE,
VADAKKUMBHAGAM KARA, MANJAPRA VILLAGE,
ALUVA TALUK, ERNAKULAM DISTRICT,
PIN - 683581**

**THIS REGULAR SECOND APPEAL HAVING COME UP FOR
ADMISSION ON 08.04.2025, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:**



JUDGMENT

1. The defendants 1, 7, and 8 in a suit for partition are the appellants. They filed appeal before the First Appellate Court with an application to condone delay of 1216 days. The First Appellate Court dismissed I.A. No.1/2021 to condone delay in filing the appeal. Consequently, the appeal was also dismissed. This Regular Second Appeal is filed challenging the judgment and decree of the First Appellate Court taking grounds against the order refusing to condone delay.
2. I heard learned Senior Counsel for the appellant Sri. S.V. Balakrishna Iyer, instructed by Smt.B.Anusree.
3. The learned Senior Counsel pointed out that even though the delay is stated as 1216 days, when the period ordered to be excluded by the Hon'ble Supreme



Court on account of Covid pandemic from 15.03.2020 to 28.04.2022 is taken into consideration, the appellants are entitled to exclude the period from 15.03.2020 to 19.03.2021, the day on which the appeal was filed before the First Appellate Court. If the said period is excluded, the actual delay is 809 days.

4. The learned Senior Counsel contended that the judgment of the Trial Court impugned is in a suit for partition and the right over immovable properties are involved, a lenient view may be taken to condone the delay in order to enable the consideration of the matter on merits. The learned Senior Counsel invited my attention to merits of the matter to substantiate that the judgment and decree of the Trial Court is erroneous.
5. The learned Senior Counsel pointed out that the plaintiff



is claiming $\frac{5}{17}$ shares in the plaint schedule property having an extent of 36.500 cents on the strength of Exts. A2 and A3 documents. The plaintiff himself has admitted that his father purchased 4 cents out of the plaint schedule property and in such case the extent available is only 32.500. But the Trial Court has ordered partition of the plaint schedule property having an extent of 36.500 cents. Exts.A2 and A3 were for definite extent of property having an extent of 6 cents supported by torrence measurements and sketch. The plaintiffs can not claim larger undivided share than covered under Exts.A2 and A3. The Trial Court has granted a decree in favour of the plaintiff, allowing $\frac{5}{17}$ shares in the plaint schedule property having an extent of 36.500 cents, which would come to 10.735 cents. If the appeal



is dismissed on the ground of delay, it would confirm the illegal judgment passed by the Trial Court.

6. I have considered the contentions.

7. It is seen from the impugned judgment that there was an earlier suit for partition as O.S. No.99/74, and the said suit was decreed, and the final decree was also passed in the said suit, but the decree was not executed. The plaintiff in the suit purchased 5/17 shares and the 1st defendant purchased 12/17 shares from the shares in the above suit. Thereafter, the plaintiff has filed the present suit.

8. The 1st defendant alone contested the suit. Since he contended that the property is sold to the defendants 7 and 8, they were also impleaded in the suit. After considering the contentions of the defendant, the Trial



Court decreed the suit ordering partition of the plaint schedule property and allotting 5/17 shares to the plaintiff. The contention of the appellants is that 4 cents out of the plaint schedule property is purchased by the father of the plaintiff. They have no case that any part of the plaint schedule property is to be excluded on account of their right over the same. The partibility of the plaint schedule property and the share alone are decided by the preliminary decree. The actual extent available for partition will be identified only in the final decree proceedings. True, in the title documents of the parties divided extent of land also is shown. But when the final decree in the earlier suit is not executed, the parties could not claim that they have the definite extent of land.



9. It is well settled that in the matter of condonation of delay, the merits of the matter shall not be taken into consideration. Hence even if there is merit in the claim of the appellants, the same need not be looked into.
10. With respect to the delay in filing the appeal before the First Appellate Court, it is seen that the First Appellate Court has found that after the impugned preliminary decree, the appellants have actively participated in the final decree proceedings. The impugned judgment is dated 26/09/2017. The case of the appellants is that the 2nd appellant was abroad upto 2020. The First Appellate Court has found that from Ext.A1, it is clear that the 2nd appellant had traveled to India a multiple number of times after the judgment was pronounced and returned to India on 13/01/2019. The



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appeal was filed by three appellants and what prevented the other appellants from filing the appeal within time is not disclosed. Hence, I am of the view that the First Appellate Court was right in dismissing the application to condone delay. I do not find any ground or reason to interfere. Accordingly, this Regular Second Appeal is dismissed.

Sd/-

M.A.ABDUL HAKHIM
JUDGE

sms