

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

TUESDAY, THE 9TH AUGUST 2005 / 18TH SRAVANA 1927

RSA.No. 1097 of 2003()

AS.143/1997 OF THE SUBORDINATE JUDGE'S COURT, THALASSERY
OS.146/1992 of MUNSIF COURT, KUTHUPARAMBA

APPELLANTS/APPELLANTS:DEFENDANTS

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1. ONIAN VASU, S/O. GOVINDAN, AGRICULTURIST
VADAKKE THOTTATHIL VEEDU, KOLAYADAMSOM,
EDAYAD DESOM.
 2. ONIAN ANGAJAN, RESIDING DO..
 3. ONIAN MATHU, D/O. KUNHAMBU, RESIDING DO.
 4. ONIAN LEELA, D/O. MATHU,
KAYAPUTH HOUSE, NEDUMPOYIL, THALASSERY TALUK.
 5. ONIAN SHYLAJA, D/O. MATHU,
MURIKKALI HOUSE, MUKKAI,
ANJARAKKANDY AMSOM DESOM.
 6. ONIAN MOHANAN, S/O. MATHU, VADAKKE
MEETHAI HUSE, KANNAVAM AMSOM, THODEEKKALAM DESOM.

BY ADVS. M/S.T.A.RAMADASAN AND A.K.ALEX

RESPONDENTS: RESPONDENTS/PLAINTIFF:

ACHATH KAKKADAVATH NALINI,
W/O. LATE KRISHNAN, AGRICULTURIST,
RESIDING AT ANAVATHUKKAL, MAHE.P.O,
PONDICHERRY. (DIED. SUPPLEMENTAL RESPONDENTS 2 TO 4
IMPLEADED AS LRS. OF DECEASED SOLE RESPONDENT.)

SUPPLEMENTAL RESPONDENTS:

2. VIJAYAN, S/O.KRISHNAN, ACHATH KAKKADAVAN HOUSE,
VELAYUDHAN MOTTA, PERINGADI P.O., KANNUR DISTRICT.
(DIED)
3. RAJAN, S/O.KRISHNAN -DO- -DO-
4. RAJALAKSHMI, D/O.KRISHNAN, -DO-

SUPPLEMENTAL RESPONDENTS 2 TO 4 ARE IMPEADED AS LEGAL
HEIRS OF THE DECEASED SOLE RESPONDENT VIDE ORDER DATED
5.7.2005 IN I.A.NO.1205 OF 2004.

SUPPLEMENTAL RESPONDENTS 3 AND 4 ARE RECORDED AS THE
LEGAL HEIRS OF DECEASED SUPPLEMENTAL RESPONDENT NO.2
AS PER ORDER DATED 21.6.2005 IN I.A.NO.2150 OF 2004.

R4 BY ADVS. M/S.K.V.PAVITHRAN AND SHEJI P.ABRAHAM

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ORDERS ON
09/08/2005, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

JUDGMENT

THE APPLICATION FOR CONDONATION OF DELAY IN FILING THE
REGULAR SECOND APPEAL IS DISMISSED. HENCE THE REGULAR SECOND
APPEAL IS ALSO DISMISSED.

9/8/2005

SD/- K.T.SANKARAN, JUDGE

//TRUE COPY//

AHZ/

K.T. SANKARAN, J.

C.M.APPL. NO. 428 OF 2003

in

R.S.A. NO. 1097 OF 2003

Dated this the 9th day of August, 2005

O R D E R

This is an application for condonation of delay of 1092 days in filing the Second Appeal. There are six appellants in the Second Appeal. The affidavit in support of the application for condonation of delay is sworn to by appellant No.1. The reasons for condonation of delay are stated in paragraphs 4 to 6 of the affidavit, which read as follows:

"4. But I could not make arrangements to apply for the printed judgement forthwith, on account of my son's illness. I could apply for the printed judgement only on 3.7.2000. The same was ready on 3-10-2000 and was delivered to my advocate on 7-11-2000 itself.

5. As such the second appeal should have been filed on or before 7.1.2001. But my son Bebin now aged 6 years was suffering from accute cardiac problems. He was admitted to various hospitals for treatment and ultimately he had to undergo an "open heart surgery" on 29.7.2002 at Amritha

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Institute of Medical Science, Cochin. I am the only person to take care for my son and nobody else in there to help me. I am producing medical certificates issued from the said "Arritha Institute" Cochin to prove my case. Still my son is continuing treatment.

6. Hence I could not contact my advocate and to make any arrangements to file second appeal before this Hon'ble Court in time. I am the person conducting the matter."

2. I.A.No.1099 of 2005 was filed to receive Annexure I Discharge Summary. Annexure I Discharge Summary shows that the son of appellant No.1 was admitted in the hospital on 27.7.2002 and surgery was conducted on 29.7.2002. The son of appellant No.1 was discharged from the hospital on 11.8.2002. Review was to be made after three months. The additional respondent No.4, who is one of the legal representatives of the deceased sole respondent in the appeal, filed a counter affidavit and opposed the application for condonation of delay. It is stated in the counter affidavit that there are six appellants and no reason is stated as to why appellant Nos.2 to 6 did not take any step to file the Second Appeal

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within time. It is also contended that the appeal was not filed within time due to the negligence on the part of the petitioners/appellants. A reply affidavit was filed by appellant No.1, wherein it is stated that the property in dispute was devided among the appellants and it was allotted to the individual share of appellant No.1 as per the partition deed dated 15.4.1997, a copy of the partition deed is produced along with the reply affidavit.

3. The appeal before the lower appellate court was filed in 1997 and it was disposed of on 31.5.2000. Appellant No.1 had produced partition deed before the lower appellate court. If appellants 2 to 6 are not interested in filing the appeal, why they were also joined as appellants in the appeal filed belatedly is not explained. The certified copy of the judgment was obtained on 7.11.2000 and appeal should have been filed on or before 7.1.2001. The appeal was filed only on 27.11.2003. Even if the case put forward by appellant No.1 is accepted, his son was

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discharged from the hospital on 11.8.2002. There is no explanation for the delay after 11.8.2002 and in fact, nothing has been stated in the affidavit as to why he could not file the appeal immediately after that date at least.

4. I am of the view that the reasons stated for condoning the long delay in filing the appeal are not genuine and acceptable. Appellants were negligent and that is the reason why they did not file the appeal within time. The averments in the affidavit as well as in the reply affidavit do not constitute sufficient reasons for condonation of delay. Moreover, the Second Appeal is filed against the concurrent decision of the courts below in a suit for injunction.

The C.M.Application is accordingly dismissed.

(K. T. SANKARAN)
Judge

ahz/