

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN

MONDAY, THE 30TH DAY OF SEPTEMBER 2013/8TH ASWINA, 1935

CRP.No. 411 of 2013 ()

CMA. NO.18/2011 OF SUB COURT, ATTINGAL.

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PETITIONERS/APPELLANTS 2 & 3/PLAINTIFF 2 & 3:

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- 1. JANARDHANA PILLAI,
S/O.AYYAPPAN PILLAI, NJARAKUZHI VEEDU,
JANARDHANAPURAM, VARKALA.**
 - 2. VIJAYAN NAIR, S/O.CHELLAPPAN PILLAI,
PERUMKULAM GRAMAM, VARKALA.**

**BY ADVS.SRI.B.S.SWATHY KUMAR,
SMT.V.BEENA.**

RESPONDENTS/RESPONDENTS/DEFENDANTS:

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- 1. SREE VIDYADI RAJA CHATTAMPI SWAMI TRUST,
JANARDHANAPURAM, VARKALA,
REPRESENTED BY ITS SECRETARY, PIN- 695 141.**
 - 2. UNNIKRIISHNAN NAIR, SECRETARY,
SREE VIDYADI RAJA CHATTAMPI SWAMI TRUST,
JANARDHANAPURAM, VARKALA-695 141.**

**BY ADVS. SRI.R.S.KALKURA,
SRI.M.S.KALESH,
SMT.A.V.PRIYA,
SRI.HARISH GOPINATH.**

**THIS CIVIL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 30-09-2013, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

rs.

P.N.RAVINDRAN, J.

C.R.P.No.411 of 2013

Dated this the 30th day of September, 2013

ORDER

The petitioners are plaintiffs 2 and 3 in O.S.No.204 of 2007 on the file of the Court of the Munsiff of Varkala. The respondents are the defendants therein. The suit instituted by the petitioners and the first plaintiff for a permanent prohibitory injunction restraining the defendants from trespassing into the plaint schedule property or from committing acts of waste therein or from cutting and removing trees therefrom or from putting up a compound wall trespassing into the plaint schedule property or from interfering with the plaintiffs' possession and enjoyment thereof was dismissed for default on 15.6.2010, the date on which it stood posted for trial. Within the period of limitation prescribed for the purpose, to be exact on 2.7.2010, the plaintiffs filed I.A.No.1288 of 2010 under Order IX Rule 9 of the Code of Civil Procedure to set aside the order dismissing the suit for default. In the affidavit filed in support of the application, the second plaintiff had averred that plaintiffs 1 and 3 had authorised him to tender

evidence, that he was laid up and therefore he could not be present in court to tender evidence on behalf of the plaintiffs. The respondents opposed the application contending inter alia that though the second plaintiff has pleaded that he was laid up not even the name of the illness is disclosed, that there is no explanation for the non-appearance of the plaintiffs and that the application is filed only with a view to delay the trial and disposal of the suit. The trial court considered the rival contentions and dismissed I.A.No.1288 of 2010 by order passed on 17.6.2011. Aggrieved thereby the plaintiffs filed C.M.A.No.18 of 2011 on the file of the Court of the Subordinate Judge of Attingal. By judgment delivered on 5.3.2013 the lower appellate court concurred with the trial court and dismissed the appeal. Hence this Civil Revision Petition.

2. I heard Sri.B.S.Swathikumar, learned counsel appearing for the petitioner. I also heard Sri.R.S.Kalkura, learned counsel appearing for the respondents. The pleadings and the materials on record disclose that the suit was dismissed for default on an earlier occasion, viz. on 6.11.2008, when the suit stood posted for evidence. It is not in dispute that on that day the defendants alone were present. The plaintiffs had at that stage filed

I.A.No.126 of 2009 under Order IX Rule 9 of the Code of Civil Procedure to set aside the order dismissing the suit for default and to restore it to file. The courts below have held that in the affidavit filed in support of the said application as well, the very same reason without specifying the illness of the second plaintiff had been put forward, but that application was allowed. The trial court has in the impugned order taken note of this aspect and held that the explanation offered by the second plaintiff does not merit acceptance. The trial court has, besides taking note of the fact that the reasons pleaded in the two applications are one and the same, held that not even a medical certificate is produced. In this Civil Revision Petition, the petitioners have not put forward a plea that the reason which led to the dismissal of the suit on an earlier occasion was different. They have no case that on the earlier occasion when the suit stood dismissed for default, in the affidavit filed in support of the application to set aside the order dismissing the suit for default and to restore it to file, the nature of the illness had been set out and a medical certificate had been produced. In the Civil Revision Petition also the nature of the illness of the second plaintiff which prevented him from appearing before the court below has not been set out. A medical certificate

has not been produced even now. In such circumstances I am not persuaded to agree with the learned counsel for the petitioners that the petitioners were prevented by sufficient cause from being present in court on 15.6.2010 when the suit stood posted for trial.

I accordingly hold that no grounds have been made out warranting interference with the impugned orders. The Civil Revision Petition fails and it is dismissed.

**P.N.RAVINDRAN,
Judge.**

ahg.

P.N.RAVINDRAN, J.

C.R.P.No.411 of 2013

O R D E R

30th September, 2013