

Chellappan Vs. C.D.Mathew

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Court : Kerala

Decided On : Sep-05-2013

Judge : Honourable Mr.Justice N.K.Balakrishnan

Appellant : Chellappan

Respondent : C.D.Mathew

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE N.K.BALAKRISHNAN THURSDAY, THE5H DAY OF SEPTEMBER201314TH BHADRA, 1935 RSA.No. 1027 of 2013 ()
----- I.A.No.235/2012 IN AS72012 of SUB COURT, CHENGANNUR OS102005 of MUNSIFF COURT, CHENGANNUR -----
APPELLANT(S)/APPELLANT/DEFENDANT NO.1 :-
----- CHELLAPPAN AGED54YEARS S/O.RAMAN, FARMER, VALYAKUNNUVADAKKECHARUVIL HOUSE KARAKKAD MURI, MULAKUZHA VILLAGE, CHENGANNUR TALUK ALAPPUZHA DISTRICT. BY ADVS.SRI.ABRAHAM SAMSON SMT.LOVELY SAMSON
RESPONDENT(S)/RESPONDENTS/PLAINTIFFS :-
----- 1. C.D.MATHEW, AGED58YEARS S/O.DANIEL, CHARIVUPARAMBIL HOUSE, KARAKKADU MURI MULAKKUZHA VILLAGE, CHENGANNUR TALUK ALAPPUZHA DISTRICT689505.

2. THANKAMMA DANIEL, AGED 82 YEARS, W/O. DANIEL, CHARIVUPARAMBIL HOUSE, KARAKKADU MURI, MULAKUZHA VILLAGE, CHENGANNUR TALUK, ALAPPUZHA DISTRICT - 689 505. BY ADV. SRI. SUNIL V. MOHAMMED (CAVEATOR FOR R1) THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 0509-2013, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: jvt N.K. BALAKRISHNAN, J.

----- R.S.A. No.1027 of 2013 ----- Dated
this the 5th day of September 2013

JUDGMENT

First defendant is the appellant. An ex parte decree was passed against him. That was appealed against with a petition to condone the delay of 2153 days in filing the appeal. The appeal was dismissed on the ground of delay. That has been challenged in this RSA.

2. Learned counsel for the appellant submits that the lower appellate court should have considered the unsustainability of the trial court judgment also while considering the application for condonation of delay. Learned counsel for the respondents vehemently opposed the petition stating that the reasons stated in the affidavit filed by the appellant are totally inconsistent and that no sufficient evidence has been adduced to sustain the ground for condonation of delay. Considering the evidence adduced on the side of the appellant, the lower appellate R.S.A. No.1027 of 2013 -:

2. :- court dismissed the petition. True, the learned appellate Judge has stated about the unacceptability of the reasons stated in the affidavit in support of the petition filed by the appellant for condonation of delay. But, there is yet another aspect to be considered.

3. The suit was filed for shifting the pathway which was in existence along the eastern boundary of the plaint schedule property starting from the public road on the north to the west of that property. A rough sketch was produced which shows the lie of the said pathway situated along the eastern boundary. The property of

the appellant/ first defendant is situated on the south of the plaintiffs' property. It is contended that it is more convenient and practicable if that pathway is shifted to the western side starting from the public road and leading to the defendant's property.

4. So many objections were raised by the defendants in the written statement filed by them. Though a rough sketch was produced along with the commissioner's report, R.S.A. No.1027 of 2013 -:

3. :- it is quite evident that the property was not surveyed and measured. The proposed way, which according to the plaintiffs, would satisfy the requirements of the defendants to have access to their property, has not been provided to them through that was the offer made by the plaintiffs. What is the legal ground based on which the plaintiffs have sought for such a relief is not discernible from the pleadings raised by the plaintiffs nor could it be seen from the ex parte judgment passed by the trial court. On what basis the learned Munsiff has granted such a decree is not stated. For that purpose, reasons should have been stated by the learned Munsiff. Not only that the learned Munsiff seems to have not seen the commissioner's plan at all. The proposed way, which according to the plaintiffs should be the alternate pathway, has not been demarcated and separately got it paved so as to enable the defendants to use the same. The offer remains in the realm of offer only. Simply because the defendants are absent or ex parte, the court is not bound to grant a decree. Even if the defendants are ex- R.S.A. No.1027 of 2013 -:

4. :- parte especially when a written statement was filed in the matter, the court is expected to state reasons for granting a decree especially when a case of this nature where the plea raised by the defendants is to shift the existing pathway to a different route. All those matters require consideration.

5. When the cause of substantial justice is pitted against technical consideration, the cause of substantial justice should be preferred to as held down by the Honourable Supreme Court. Therefore, even if the reasons stated in the affidavit may not be so satisfactory to condone the delay of 2153 days in filing the appeal before the appellate court, these aspects should not have been omitted to be

considered by the lower appellate court.

6. The learned counsel for the respondents submits that the only direction issued by this Court is to consider the application for condonation of delay and to dispose of the same. What all are the matters to be considered while considering the petition for condonation of delay are not something to be stated by this Court while giving such a R.S.A. No.1027 of 2013 -:

5. :- direction to the lower appellate court. Therefore, the fact that such directions were not issued is not a reason to say that the lower appellate court can omit to consider those aspects. Since the judgment rendered by the trial court is bereft of any reasoning, it cannot be sustained. Therefore, this RSA is to be allowed, but at the same time, since there was inordinate delay in filing the appeal, the appellant should be mulcted with costs to be paid to the respondents. In the result, this RSA will stand allowed on condition that the appellant should pay to the respondents a sum of `7,500/- (Rupees Seven Thousand Five Hundred only) as costs to be paid within one month from today. If costs as aforesaid is paid, this RSA will stand allowed; in which case, the decree and judgment passed by the trial court will stand set aside and the matter will be remanded to the trial court for fresh disposal in accordance with law after giving opportunity to both sides to adduce evidence in the matter. Since it would be a very old suit, the learned Munsiff will dispose of the suit within three months from the R.S.A. No.1027 of 2013 -:

6. :- date posted for appearance. The parties will be present before the trial court on 10.10.2013. Sd/- N.K.BALAKRISHNAN, JUDGE. //True Copy// P.A. To Judge
Jvt

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