

**Jacob Alias Yacob vs Thomas**

**Jacob Alias Yacob vs Thomas**

**SooperKanoon Citation :** [sooperkanoon.com/1283772](https://sooperkanoon.com/1283772)

**Court :** Kerala

**Decided On :** Mar-20-2025

**Judge :** Honourable Mr.Justice Basant Balaji

**Appeal No. :** OP(C)/2944/2024

**Appellant :** Jacob Alias Yacob

**Respondent :** Thomas

**Judgement :**

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE BASANT BALAJI  
THURSDAY, THE 20TH DAY OF MARCH 2025 / 29TH PHALGUNA,  
1946 (AGAINST THE ORDER/JUDGMENT DATED 02.11.2024 IN CMA  
NO.21 OF 2024 OF ASSISTANT SESSIONS COURT/PRINCIPAL SUB  
COURT / COMMERCIAL COURT, IRINJALAKUDA)  
PETITIONER/APPELLANT IN CMA/PETITIONER IN IA/IST  
DEFENDANT OS: JACOB ALIAS YACOB, AGED 60 YEARS, S/O  
PAULOSE, CHAKKALAKKAL, MELADOOR DESOM, ALATHOOR  
VILLAGE, CHALAKKUDY TALUK, THRISSUR DISTRICT, PIN - 680 741  
BY ADVS. T.RAMPRASAD UNNI S.M.PRASANTH SHEHIN S. DEVIKA  
S. RESHMA DAS P. RESPONDENTS/RESPONDENTS IN

CMA/PETITIONER & R2 IN IA A ND PLAINTIFF AND D2 IN OS: 1 THOMAS, AGED 65 YEARS, S/O.CHENGINIYDAN ANTONY, KUZHUR DESOM, KAKKULISSERY VILLAGE, CHALAKUDY TALUK, THRISSUR DISTRICT, PIN - 680 734 2 DEENA JACOB, AGED 52 YEARS, WIFE CHAKKALAKKAL JACOB, MELADOOR DESOM, ALATHUR VILLAGE, CHALAKUDY TALUK, THRISSUR DISTRICT, PIN - 680 741 BY ADV RENIL ANTO KANDAMKULATHY THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 19.12.2024, THE COURT ON 20.03.2025 DELIVERED THE FOLLOWING:

## **JUDGMENT**

(Dated: 20th March, 2025) The petitioner is the 1st defendant in O.S.No.219 of 2018 of the Munsiffs Court, Chalakkudy. The Original Suit was filed for recovery of an amount of Rs.7,06,400/- with interest at 12% per annum. A written statement was filed by the 1st defendant on 13.02.2020.

2. The case of the petitioner is that he had to leave for

Saudi Arabia due to financial difficulties in March, 2022. Since after the filing of the written statement, the defendant did not appear, they were set ex-parte, and an ex-parte decree was passed on 25.08.2022. Returning from Saudi Arabia, he filed a petition to set aside the ex-parte order with a petition to condone the delay. A detailed objection was filed by the 1st respondent (Ext.P5). The trial

court, thereafter, passed Ext.P6 common order in I.A.Nos.1 and 5 of 2023, dismissing the applications to condone the delay and the petition to set aside the ex-parte decree. The reasons stated by the trial court are that the suit was decreed thrice before, i.e., on 12.03.2019, 27.08.2019, and 07.09.2021, and whenever the case was listed for trial, the petitioner and the 2nd respondent failed to appear for evidence, and ex-parte decrees were passed. Each time the ex-parte decree was passed, the petitioner prayed to set aside the same. This is the 4th time the suit has

been listed for trial, and the defendants failed to appear and to give evidence, and thereafter, the suit was decreed. The 2nd defendant, who is the wife, always participated in the trial. The suit is of the year 2018. Even today, the plaintiff is not able to get the fruits of the decree, therefore, the trial court dismissed the application. Though he had taken the matter

before the lower appellate court by filing CMA No.21 of 2024 for dismissal of I.A.Nos.1 of 2023 and 5 of 2023, the lower appellate court concurred with the finding and dismissed the application.

3. The counsel for the petitioner submits that the

petitioner herein was in Saudi Arabia and he returned only during December 2022, but the case was listed before that i.e., in June 2022, therefore, he could not participate.

4. The counsel for the respondent vehemently opposed

the same and submitted that, it was only to drag on the proceedings and not to allow the respondent to get the fruits of the decree; the petitioner had filed the above petitions whenever the case was listed and ex-parte decrees were passed.

5. This Court, while admitting the original petition, has directed the petitioner to remit an amount of Rs.50,000/-, and the execution proceedings were stayed. The petitioner has produced a receipt evidencing the deposit of Rs.50,000/- before the execution court.

6. Heard the counsel for the petitioner as well as the respondents.

7. Taking note of the fact that the petitioner had filed a

written statement, thereafter kept away, the court below is justified in dismissing the application as this is the 4th time the ex-parte decree is sought to be set aside. Taking into consideration the fact that, as far as possible, all lis has to be decided on merits, I deem it appropriate to give

one more chance to the petitioner to contest the case on merits, but on stringent conditions. Therefore, this original petition is allowed, and Exts.P3 and P3(a) are set aside on condition that the petitioner remits an amount of

Rs.3,00,000/- (Rupees Three lakhs only) before the execution court within one month. The amount already deposited pursuant to the

**order of this Court on 19.12.2024, shall be given set off. If the**

deposit is made within one month from today, the decree will be set aside, and the court below shall proceed and dispose of the same on merits within two months.

Sd/- BASANT BALAJI, JUDGE ss APPENDIX OF OP(C) 2944/2024 PETITIONER EXHIBITS Exhibit P1 TRUE COPY OF PLAINT DATED 24..03..2018 IN O.S. NO. 219 OF 2018 ON THE FILE OF THE MUNSIFF'S COURT, CHALAKUDY Exhibit P2 TRUE COPY OF WRITTEN STATEMENT FILED BY THE PETITIONER/1ST DEFENDANT ON 13..02..2020 IN O.S. NO. 219 OF 2018 ON THE FILE OF THE MUNSIFF'S COURT,

Exhibit P3 TRUE COPY OF JUDGMENT DATED 25..08..2022 IN O.S. NO. 219 OF 2018 ON THE FILE OF THE MUNSIFF'S COURT, Exhibit P3(a) TRUE COPY OF DECREE DATED 25..08..2022 IN O.S. NO. 219 OF 2018 ON THE FILE OF THE MUNSIFF'S COURT, Exhibit P4 TRUE COPY OF AFFIDAVIT ALONG WITH PETITION DATED 22..02..2023 IN IA NO. 1 OF 2023 IN O,S. NO. 219 OF 2018 ON THE FILE OF THE MUNSIFF'S COURT, Exhibit P5 TRUE COPY OF OBJECTION DATED 26..06..2023 FILED BY

THE FIRST RESPONDENT HEREIN/PLAINTIFF IN I.A.NO. 1 OF 2023 IN O.S. NO. 219 OF 2018 ON THE FILE OF THE MUNSIFF'S COURT, CHALAKKUDY

Exhibit P6 TRUE COPY OF COMMON ORDER DATED 11..04..2024 IN I.A. NOS. 1 OF 2023 AND 5 OF 2023 IN O.S. NO. 219 OF 2018 ON THE FILE OF THE MUNSIFF'S COURT, Exhibit P7 TRUE COPY OF MEMORANDUM OF APPEAL DATED 13..06..2024 IN C.M.A. NO. 21 OF 2024 ON THE FILE OF THE PRINCIPAL SUB COURT, IRINJALAKUDA Exhibit P8 TRUE COPY OF

## SCHEDULE OF DOCUMENTS DATED

30..09..2024 PRODUCING THE EMBASSY ATTESTED COPY OF THE PETITIONER'S PASSPORT IN C.M.A.NO. 21 OF 2024 ON THE FILE OF THE PRINCIPAL SUB COURT, IRINJALAKUDYA Exhibit P9 TRUE COPY OF AFFIDAVIT DATED 30..09..2024 ALONG WITH A PETITION TO PRODUCE PASSPORT OF THE PETITIONER, FILED BY HIS POWER OF ATTORNEY HOLDER Exhibit 10 TRUE COPY OF JUDGMENT DATED 02..11..2024 IN C.M.A. NO. 21 OF 2024 ON THE FILE OF THE PRINCIPAL SUB COURT, IRINJALAKUDA

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**