

Aravindan vs Divakaran

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Court : Kerala

Decided On : Feb-29-2024

Judge : Honourable Mr.Justice C. Jayachandran

Appeal No. : OP(C)/2628/2012

Appellant : Aravindan

Respondent : Divakaran

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE C. JAYACHANDRAN THURSDAY, THE 29TH DAY OF FEBRUARY 2024 / 10TH PHALGUNA, 1945 OP(C) NO. 2628 OF 2012 IN AS NO.91 OF 2008 OF ADDITIONAL DISTRICT COURT-II & IST ADDITIONAL MOTOR ACCIDENT CLAIMS TRIBUNAL, MAVELIKKARA PETITIONERS:

1 ARAVINDAN AGED 60 YEARS, S/O.KARUTHAKOCHU, KATTIL, THARAYILKADAVU MURI, ARATTUPUZHA VILLAGE 2 ABILASH S/O.ARAVINDAN ,KATTIL, THARAYILKADAVU MURI, ARATTUPUZHA VILLAGE. 3 ANEESH S/O.ARAVINDAN, KATTIL, THARAYILKADAVU MURI, ARATTUPUZHA VILLAGE, 4 MADANAN CHANDRAN

S/O.PERUMAL, THEKKEPIRATHU VEETIL, THARYILKADAVU MURI,
ARATTUPUZHA VILLAGE.

BY ADV SRI.K.SHAJ RESPONDENTS:

1 DIVAKARAN S/O.AYYAPPAN, KATTIL VEEDU, THARAYILKADAVU
MURI, ARATTUPUZHA VILLAGE. *ADDL.R2 SATHI AGED 60 YEARS,
W/O DIVAKARAN, KATTIL VEEDU, THARAYILKADAVU MURI,
ARATTUPUZHA VILLAGE. *ADDL.R3 BAIJU AGED 38 YEARS, S/O
DIVAKARAN, KATTIL VEEDU, THARAYILKADAVU MURI,
ARATTUPUZHA VILLAGE. *ADDL.R4 BIJU AGED 35 YEARS, S/O
DIVAKARAN, KATTIL VEEDU, THARAYILKADAVU MURI,
ARATTUPUZHA VILLAGE

* ADDITIONAL RESPONDENTS 2 TO 4 ARE IMPEADED VIDE

ORDER DATED 08/11/2022 IN IA 13537/13

BY ADV SRI.B.RENJITHKUMAR THIS OP (CIVIL) HAVING COME UP FOR
ADMISSION ON 29.02.2024, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING: - 2 -

J U D G M E N T

Dated this the 29th day of February, 2024 Read order dated 15.02.2024. The
petitioners are the appellants in A.S. No.91 of 2008 of the Additional District Court
- II, Mavelikkara. The appeal was one challenging the

judgment and decree in O.S. No.187 of 2004 of the

Munsiffs Court, Haripad. The appeal was dismissed for default on
12.12.2011. Within two days, on 14.12.2011, Ext.P1 application for
restoration of the suit was filed and the same was allowed on
15.03.2012, on condition that the petitioners pay a cost of Rs.750/- to the

counsel for the respondents within ten days. The matter was accordingly posted to 31.03.2012. However, the cost was not paid within time. It is the case of the present petitioners that, though they attempted to pay the cost through the counsel on 26.03.2012, the same was, however, refused. Accordingly, an application was filed on 29.03.2012 for extension of time stipulated for payment of cost, vide Ext.P3. However, by Ext.P5

order dated 31.03.2012, both Ext.P3 as well as the

original application for restoration of the suit were dismissed for non compliance of the condition regarding payment of cost.

2. Heard the learned counsel for the - 3 -

petitioners. Though Adv. B. Renjith Kumar is present before this Court, he would submit that he was appearing only for the original respondent and that, he has no instructions from additional respondents 2 to 4, who were impleaded pursuant to the death of original respondent.

3. Having heard the learned counsel appearing

for the petitioner and having perused the records, this Court notice that for an apparently silly and technical reason, the instant Original Petition is pending before this Court from 2012 to 2024. It is true that a restoration petition was filed on time and the same was allowed, subject to payment of a nominal cost of Rs.750/-. Still, the condition was not complied with. Ext.P3 application was filed on 29.03.2012 to extend the time sought for, which was dismissed. The original restoration application, as well as the extension petition, both, were dismissed vide Ext.P5.

4. On the one hand, the requirement to dispose

cases on merit, looms large. On the other, the plight of an action hanging on the original respondent, and now the additional respondents, way back from 2004 looms large. Indubitably, the original respondent had obtained a decree in his favour. The instant appeal is of the year 2008. The impugned Ext.P5 order indicates that the appeal happened to be dismissed, since the appellant was not prepared to argue the matter, despite affording several opportunities.

5. In the circumstances, this Court is of the - 4 -

view that the interest of justice will be served, if the petitioners are permitted to pay the cost ordered by the trial Court to the counsel for the original respondent appearing in the Court below, coupled with a further cost of Rs.10,000/- to the Kerala State Legal Services Authority. Both payments as directed shall also be effected within a period of two weeks from today.

Post on 29.02.2024 to report compliance. Learned counsel for the petitioner submits that cost has been paid and a memo to that effect has been filed. Inasmuch as the cost is paid, the restoration petition will stand allowed and the court will proceed with the matter, expeditiously, and will dispose of the same within a period of six months from the date of receipt of a copy of this judgment. The Original Petition is disposed of, as above. Sd/- C.JAYACHANDRAN, JUDGE
Skk//29.02.2024 - 5 - APPENDIX OF OP(C) NO.2628/2012 PETITIONER'S EXHIBITS:- EXHIBIT P1 TRUE COPY OF I.A. NO.933/2011 IN A.S. NO.91/2008 ON THE FILE OF THE ADDITIONAL DISTRICT JUDGE-II, MAVELIKARA EXHIBIT P2 TRUE COPY OF ORDER DATED 15/03/2012 IN I.A. NO.933/2011 IN A.S.NO.91/2008 OF ADDITIONAL DISTRICT JUDGE-II, MAVELIKARA EXHIBIT P3 TRUE COPY OF I.A. NO.331/2011 IN A.S. NO.91/2008 OF THE ADDITIONAL DISTRICT JUDGE-II, MAVELIKARA FILED BY THE PETITIONERS EXHIBIT P4 TRUE COPY OF COUNTER OBJECTION FILED BY THE RESPONDENT IN I.A.NO.933/2011 IN A.S.NO.91/2008 OF THE ADDITIONAL DISTRICT JUDGE-II, MAVELIKARA EXHIBIT P5 TRUE COPY OF ORDER DATED 31/03/2012 IN

I.A.NO.331/2012 IN A.S.NO.91/2008 OF THE ADDITIONAL DISTRICT JUDGE-II,
MAVELIKARA

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