

Madhu vs George(Died)

Madhu vs George(Died)

SooperKanoon Citation : sooperkanoon.com/1477772

Court : Kerala

Decided On : Nov-02-2022

Judge : Honourable Mr.Justice C.S.Dias

Appeal No. : OP(C)/2230/2012

Appellant : MADHU

Respondent : George(Died)

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE C.S.DIAS WEDNESDAY,
THE 2ND DAY OF NOVEMBER 2022 / 11TH KARTHIKA, 1944 OP(C)
NO. 2229 OF 2012 AGAINST CMA 47/2010 OF II ADDITIONAL
DISTRICT COURT, ERNAKULAM OS 1259/2003 OF I ADDITIONAL
MUNSIFF COURT,ERNAKULAM PETITIONER: HARIHARA MENON
AGED 71 YEARS S/O.SREEDHARA MENON,
PADINJARETHOTTUNGAL HOUSE, VADAKKUMTHODU LANE,
PALLURUTHY, COCHIN-6. BY ADV SRI.JESWIN P.VARGHESE
RESPONDENTS:

1 GEORGE (DIED) S/O.RAPHEAL, CHIRAMAL PARAMBIL, ELAMKULAM, ERNAKULAM. 2 ROSEY GEORGE W/O.LATE GEORGE, CHIRAMAL PARAMBIL,PALACHUVADU, CANAL ROAD, CEPZ (PO), THIRKKAKKARA VILLAGE, KAKKANADU, ERNAKULAM DISTRICT. 3 LAIZA JUSTIN AGED 22 YEARS, W/O.JUSTIN, KALLUVEETIL, NADATHURUTHU, SOUTH VAZHAKLAM P.O., KUNNATHUNADU TALUK, ERNAKULAM DISTRICT, PIN - 683565. 4 LIZA SIJU AGED 21 YEARS, W/O.SIJU, MUTTOMTHOTTIL HOUSE, WEST MORAKKALA, KUMARAPURAM P.O., KUNNATHUNADU VILLAGE,PIN-683 565. 5 ROBERT GOERGE S/O.LATE GEORGE, HIRAMAL PARAMBIL,PALACHUVADU, CANAL ROAD, CEPZ (PO), THIRKKAKKARA VILLAGE, KAKKANADU, ERNAKULAM DISTRICT-682 030.. BY ADV SRI.K.M.SANAL THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 02.11.2022,

ALONG WITH OP(C).2230/2012, 2237/2012, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE C.S.DIAS WEDNESDAY, THE 2ND DAY OF NOVEMBER 2022 / 11TH KARTHIKA, 1944 OP(C) NO. 2230 OF 2012 AGAINST CMA NO.48/2010 OF II ADDITIONAL DISTRICT COURT, ERNAKULAM AGAINST OS 1259/2003 OF I ADDITIONAL MUNSIF COURT,ERNAKULAM PETITIONER:: MADHU AGED 42 YEARS, S/O.K.N.KARUNAKARA KAIMAL, KALALTHILPARAMBIL HOUSE, PANAVALLYERNAKULAM DISTRICT. BY ADV SRI.JESWIN P.VARGHESE RESPONDENTS:

1 GEORGE(DIED) S/O.RAPHAEL, CHIRAMAL PARAMBIL, ELAMKULAM, ERNAKULAM. 2 ROSEY GEORGE W/O.(LATE GEORGE)CHIRAMAL PARAMBIL, PALACHUVADU, CANAL ROAD CEPZ (P.O), THRIKKAKKARA VILLAGE, KAKKANADU ERNAKULAM DISTRICT. 3 LAIZA JUSTIN AGED 22

YEARS,W/O.JUSTIN,KALLUVEETIL, NADATHURUTHU, SOUTH VAZHAKULAM (PO) KUNNATHUNADU TALUK, ERNAKULAM DISTRICT. 4 LIZA SIJU AGED 21 YEARS W/O. SIJU, MUTTOMTHOTTIL HOUSE, WEST MORAKKALA KUMARAPURAM (PO), KUNNATHUNADU VILLAGE PIN. 683 565. 5 ROBERT GEORGE AGED 18 YEARS S/O.(LATE) GEORGE, CHIRAMAL PARAMBIL, PALACHUVADU, CANAL ROAD CEPZ (PO), THRIKKAKKARA VILLAGE, KAKKANAD ERNAKULAM DISTRICT. BY ADVS. SRI.ANUP T PAUL SRI.B.K.CHANDRAN SRI.K.M.SANAL THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 02.11.2022,

ALONG WITH OP(C)NOS.2229/2012 AND 2237/2012, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE C.S.DIAS WEDNESDAY, THE 2ND DAY OF NOVEMBER 2022 / 11TH KARTHIKA, 1944 OP(C) NO. 2237 OF 2012 AGAINST CMA NO.46/2010 OF II ADDITIONAL DISTRICT COURT, ERNAKULAM AGAINST OS 1259/2003 OF I ADDITIONAL MUNSIF COURT,ERNAKULAM PETITIONER: K.VASUDEVAN AGED 64 YEARS, S/O.KRISHNA PILLAI, PANDALATH BUNGALOW, MANAGING DIRECTOR VAS PHARMACEUTICALS(INDIA) LTD., POONITHURA VILLAGE VYTTLA, COCHIN-19. BY ADV SRI.JESWIN P.VARGHESE RESPONDENTS:

1 GEORGE (DIED)S/O.RAPHAEL, CHIRAMAL PARAMBIL, ELAMKULAM, ERNAKULAM. 2 ROSEY GEORGE WO.LATE GEORGE CHIRAMAL PARAMBIL, PALACHUVADU, CANAL ROAD,CEPZ (P.O), THRIKKAKKARA VILLAGE, KAKKANADU,ERNAKULAM DISTRICT. PIN - 682 030 3 LAIZA JUSTIN W/O.JUSTIN AGED 22 YEARS KALLUVEETIL, NADATHURUTHU, SOUTH VAZHAKULAM (PO) KUNNATHUNADU TALUK, ERNAKULAM DISTRICT. PIN. 4 LIZA SIJU W/O. SIJU AGED 21 YEARS MUTTOMTHOTTIL HOUSE, WEST

MORAKKALA,KUMARAPURAM (PO), KUNNATHUNADU VILLAGE, PIN. 683 565. 5 ROBERT GEORGE S/O.LATE GEORGE AGED 18 YEARS,CHIRAMAL PARAMBIL, PALACHUVADU, CANAL ROAD,CEPZ (PO), THRIKKAKKARA VILLAGE, KAKKANAD, ERNAKULAM DISTRICT. PIN 682 030. BY ADVS. SRI.K.M.SANAL SRI.K.R.MOHANAN THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 02.11.2022,

ALONG WITH OP(C)NOS.2229/2012 AND 2230/2012, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

As these original petitions arise out of the same common judgment and are between the same parties, they are disposed of by this common judgment.

2. The three original petitions are independently filed by the defendants 1 to 3 in O.S No.1259/2003 of the Court of the 1st Additional Munsiff, Ernakulam (Trial Court) against the same common order and judgment.

3. The original first respondent, who is now no

more, had filed the suit, inter alia, to declare that the sale deed bearing No.5447/02 of the SRO, Ernakulam, is null and void. On his death, the respondents 2 to 5 were impleaded as additional plaintiffs in the suit. The suit was listed for trial on 29.6.2009. As the counsel for the petitioners was out of station, the Trial Court set the petitioners ex-parte. They filed applications to set aside the ex-parte order. The applications were not listed and an ex parte decree was passed on 2.7.2009. Then, the petitioners filed applications to set aside the ex-parte decree. However, the Trial Court rejected the said applications also. Accordingly, the petitioners filed independent appeals as CMA Nos.46/2010, Ernakulam (Appellate Court). By the impugned common judgment, the Appellate Court dismissed the appeals upholding the ex-parte decree. The common order passed by the Trial Court and the common judgment passed by the Appellate Court are erroneous and unsustainable in law. Hence the original petitions.

3. Heard; Sri.Jeswin.P.Varghese, the learned counsel appearing for the petitioners in the three original petitions and Sri.K.M.Sanal, the learned counsel appearing for the respondents.

4. The point is whether there is any error in the impugned common order and the impugned common

judgment.

5. On an analysis of the impugned common order and

impugned common judgment, it can be seen that the courts below have declined to set aside the ex-parte decree based on the antecedence of the petitioners in prosecuting the suit.

6. It is trite, while considering an application to set

aside an ex-parte decree, the antecedence of the party shall not be looked into. The pivotal aspect to be considered in such cases is whether the party had stated sufficient cause to set aside the ex-parte decree on that particular date.

7. Both the courts below have gone in this direction

by holding that the petitioners were continuously absent on the various dates when the suit was listed for trial. Undisputedly, there was no delay in setting aside the ex parte decree.

8. The Honourable Supreme Court in Collector, Land

Acquisition, Anantnag v. Katiji, [A.I.R. 1987 (S.C.) 1353] has emphatically held that Courts should take a liberal, justice-oriented, justifiable and reasonable approach in condoning the delay. The Courts have been reminded that a party who, as per the present adversarial legal system, has selected his advocate, briefed him and paid his fees can remain supremely confident that his lawyer will look after his interest and such an innocent party who has done everything in his power and expected of him, should not suffer for the inaction, deliberate omission or misdemeanor of his counsel.

9. Again, the Honourable Supreme Court in Indian Oil Corporation Ltd. and Ors vs. Subrata Borah Chowlek and Ors. (2010 KHC 4909) has succinctly held thus:

7. Having heard the learned counsel, we are of the opinion that in the instant case a sufficient cause had been made out for condonation of delay in filing the appeal and therefore, the High Court erred in declining to condone the same. It is true that even upon showing a sufficient cause, a party is not entitled to the condonation of delay as a matter of right, yet it is trite that in construing sufficient cause, the Courts generally follow a liberal approach particularly when no negligence, inaction or mala fides can be imputed.

10. It is also well settled that every endeavour should be made by the courts to dispose of the case on merits rather than technicalities.

11. On a reading of the impugned common order and

the impugned common judgment, this Court is of the definite view that, the courts below have adopted a hyper technical stand by rejecting the applications to set aside the ex-parte decree, which warrants to be interfered by this Court in exercise of the supervisory powers of this under Article 227 of the Constitution of India. Nonetheless, I make it clear that the Trial Court shall make every endeavour to dispose of the suit within a time frame as fixed by this Court, which will do complete justice to the parties. In the result, the original petitions are allowed in the following manner:

(i) The common judgment in CMA Nos.46/2010,

(ii) The common order in I.A Nos.4735/2009, Court is set aside.

(iii) O.S No.1259/2003 is restored back to file.

(iv) The court below shall afford both parties an opportunity to complete the pre-trial steps, if any.

(v) The Trial Court shall consider and dispose of O.S

possible and at any rate on or before 31.3.2023. Sd/- C.S.DIAS ma/3.11.2022
JUDGE APPENDIX OF OP(C) 2229/2012 PETITIONERS EXHIBITS:
EXT.P1:TRUE COPY OF THE APPLICATION IN I.A. NO.5569/2009 IN O.S.
NO.1259/2003 FILED BEFORE 1ST ADDITIONAL MUNSIF COURT,
ERNAKULAM. EXT.P2: TRUE COPY OF THE ORDER OF THE 1ST
ADDITIONAL MUNSIF COURT, ERNAKULAM, IN I.A NO.5569/2009 IN O.S.
1259/2003 DATED 15.1.2010 EXT.P3: A TRUE COPY OF THE ORDER OF THE
1ST ADDITIONAL DISTRICT COURT, ERNAKULAM IN CMA NO.47/2010
DATED 24.9.2011 RESPONDENT EXHIBITS Exhibit R(1)(a) True copy of counter
affidavit in IA I.A No. 4735/2009 APPENDIX OF OP(C) 2230/2012 PETITIONERS
EXHIBITS: EXT.P1:TRUE COPY OF THE APPLICATION IN I.A. NO.5570/2009
IN O.S. NO.1259/2003 FILED BEFORE 1ST ADDITIONAL MUNSIF COURT,
ERNAKULAM. EXT.P2: TRUE COPY OF THE ORDER OF THE 1ST
ADDITIONAL MUNSIF COURT, ERNAKULAM, IN I.A NO.5570/2009 IN O.S.
1259/2003 DATED 15.1.2010 EXT.P3: A TRUE COPY OF THE ORDER OF THE
1ST ADDITIONAL DISTRICT COURT, ERNAKULAM IN CMA NO.48/2010
DATED 24.9.2011

APPENDIX OF OP(C) 2230/2012 RESPONDENT EXHIBITS Exhibit R(1)(a) true
copy of the counter affidavit filed against the I.A No. 4735/2009 Exhibit R1(b) True
copy of the CMA No.10/2008 APPENDIX OF OP(C) 2237/2012 PETITIONERS
EXHIBITS: EXT.P1:TRUE COPY OF THE APPLICATION IN I.A. NO.4735/2009
IN O.S. NO.1259/2003 FILED BEFORE 1ST ADDITIONAL MUNSIF COURT,
ERNAKULAM.

EXT.P2: TRUE COPY OF THE ORDER OF THE 1ST ADDITIONAL MUNSIF
COURT, ERNAKULAM, IN I.A NO.4735/2009 IN O.S. 1259/2003 DATED
15.1.2010 EXT.P3: A TRUE COPY OF THE ORDER OF THE 1ST ADDITIONAL
DISTRICT COURT, ERNAKULAM IN CMA NO.46/2010 DATED 24.9.2011

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com