

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE HARUN-UL-RASHID

WEDNESDAY, THE 19TH AUGUST 2009 / 28TH SRAVANA 1931

RP.No. 466 of 2009()

AGAINST THE ORDER IN IA.NO.343/3009 IN SA.558/1995 Dated 12/02/2009

REVIEW PETITIONER/2ND APPELLANT IN SA.

P.K. PRABHAVATHI AMMA,
W/O. P.R. SUKUMARA PANICKER,
PADINJATTETHIL, KOIPURAM VILLAGE,
PULLAD MURI, THIRUVALLA TALUK.

BY ADV. SRI.RAMPRASAD UNNI.T.
SRI.PREM NVAZ
SRI.MANU TOM CHERUVALLY
SRI.SMITHA GEORGE

RESPONDENTS/PETITIONERS IN IA & IST APPELLANT IN SA:

1. PONNAMMA, PADINJATTETHIL, KOIPURAM
VILLAGE, PULLAD MURI, THIRUVALLA TALUK.
2. PUSHPALATHA C. NAIR, D/O. PONNAMMA,
PADINJATTETHIL KOIPURAM VILLAGE,
PULLAD MURI, THIRUVALAL TALUK.
3. KANAKALATHA C. NAIR,
D/O. PONNAMMA, PADINJATTETHIL KOIPURAM
VILLAGE, PULLAD MURI, THIRUVALLA TALUK.
4. JAYALATHA C. NAIR,
D/O. PONNAMMA, PADINJATTETHIL,
KOIPURAM VILLAGE, PULLAD MURI, THIRUVALLA TALUK.
5. P.R. SUKUMARA PANICKER,
PADINJATTETHIL, KOIPURAM VILLAGE,
PULLAD MURI, THIRUVALLA TALUK.

ADV. SRI.A.BALAGOPALAN FOR R1 TO 4
SRI.A.RAJAGOPALAN FOR R1 TO 4
SRI.IMTHIYAZ AHAMED FOR R1 TO 4
SRI.K.SANEESH KUMAR FOR R1 TO 4
SMT.KALA G.NAMBIAR FOR R1 TO 4
ADV. SRI. K.RAMACHANDRAN FOR R5

THIS REVIEW PETITION HAVING COME UP FOR ADMISSION
ON 19/08/2009, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

HARUN-UL-RASHID, J.

R.P.No.466 OF 2009 &
I.A.NO.1051 OF 2009 IN
R.S.A.NO.558 OF 1995

DATED THIS THE 19TH DAY OF AUGUST, 2009

O R D E R

I.A.No.1051/2009 is filed by the 1st appellant seeking to set aside the compromise decree and judgment dated 12/2/2009. He also sought for setting aside the order passed in the compromise petition as I.A.No.344/2009.

2. The District Court, Pathanamthitta passed a decree for recovery of possession of the building and its premises. The applicant herein is the 1st defendant and his wife is the 2nd defendant in the suit. They are the appellants in the second appeal.

3. The 1st defendant is the brother of the 1st plaintiff. The parties are close relatives. When the matter was pending in second appeal, the parties entered into a compromise. The 1st appellant and the plaintiffs have settled the disputes and filed

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I.A.No.344/2009 stipulating the terms of compromise. The respondents in the second appeal filed a petition as I.A.No.343/2009 stating that the 2nd appellant, who is the wife of the 1st appellant, is not a necessary party to the suit and the appeal and that they are not claiming any relief against the 2nd appellant and therefore prayed for deletion of her name from the array of parties. This application was not opposed by the appellants. Appellants are represented by the very same counsel. The 1st appellant is the respondent in I.A.No.343/2009. The application is not opposed and hence the 2nd appellant is removed from the party array. Subsequently, the compromise petition namely, I.A.No.344/2009 was allowed by this court and a judgment in terms of compromise was passed on 12/2/2009. Subsequently, on 2nd June, 2009 I.A.No.1051 was filed by the 1st appellant stating that his wife's name has been deleted in a petition filed by the counsel for respondents 1 to 4, that the counsel for the respondents cannot file a petition to delete the

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name of the 2nd appellant that he was forced to enter into a compromise believing the words of respondents 1 to 4 and that the terms of compromise are twisted and the same was recorded wrongly. It is also averred that he do not know English and in fact the contents of compromise petition were not read over to the him in Malayalam. In such circumstances, stating that the terms of compromise will not be very much prejudicial to the 1st appellant and his wife, he happened to execute it. For the reasons stated above, the 1st appellant wanted to set aside the compromise decree and judgment passed by this Court. The 2nd appellant, who is none other the wife of the 1st appellant, filed this review petition seeking review of the judgment and decree.

4. From facts and circumstances noted above, though I am not satisfied with the manner in which the applications are filed and the reasons stated for setting aside the judgment or review the judgment as the case may be, finding that the 2nd appellant is not a party to the compromise, her request to review

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the judgment and decree passed in the second appeal and to re-hear the appeal deserves consideration. In fact the 2nd appellant-wife is already a party to the petition, I.A.No.343/09 filed by the plaintiffs, in which both the appellants are respondents. That application was not opposed and this Court allowed the application deleting the 2nd appellant from the party array. I am also not satisfied with the explanation offered by the 1st appellant for setting aside the judgment. Some reasons are stated in the petition for setting the aside the decree and judgment. One of the reasons stated is that the contents of the compromise petition were not read over to him in Malayalam and that his counsel happened to sign to the compromise petition believing that the terms of compromise will not be very much prejudicial to the 1st appellant or his wife, the 2nd appellant. I have no doubt in my mind that these two applications are filed without any bona fides and is the result of an after thought. Even if the 1st appellant is not able to read and write English, I believe that his

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counsel knew English and therefore, he had already understood the contents of the compromise petition. Moreover, all the applications filed before this Court by appellants 1 and 2 are in English and I do not find any justification for stating the said reason for setting aside the judgment and decree. In fact the two applications ought to have been dismissed at the threshold. Since the 2nd appellant is not a party to the compromise and a decree was passed by the Appellate Court as against appellants 1 and 2, in the interest of justice and in order to avoid protraction of the proceedings, I am of the view that these applications can be allowed. Therefore, Review Petition filed by the 2nd appellant and I.A.No.1051/2009 filed by the 1st appellant are allowed. The compromise decree and judgment passed by this Court is reviewed.

Post the Second Appeal for hearing on 24/8/2009.

**HARUN-UL-RASHID ,
Judge .**

kcv .

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