



2024:KER:76488

RSA NO. 117 OF 2024

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(CR)

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE M.A.ABDUL HAKHIM

WEDNESDAY, THE 16TH DAY OF OCTOBER 2024 / 24TH ASWINA, 1946

RSA NO. 117 OF 2024

AGAINST THE JUDGMENT DATED 06.10.2023 IN AS NO.68 OF 2020 OF

ADDITIONAL DISTRICT COURT - VII, ERNAKULAM

ARISING OUT OF THE JUDGMENT DATED 31.01.2020 IN OS NO.1132 OF 2015

OF I ADDITIONAL MUNSIF COURT, ERNAKULAM

APPELLANTS/RESPONDENTS/DEFENDANTS:

- 1 N.V CHANDRAN
AGED 67 YEARS
S/O VELAYUDHAN ACHARI, NADUVILETHADATHIL HOUSE, VETTIKKAL
DESOM, MULANTHURUTHY VILLAGE, KANAYANNUR TALUK, ERNAKULAM
DISTRICT, PIN - 682314
- 2 N.V. NADARAJAN
AGED 63 YEARS
VELAYUDHAN ACHARI, NADUVILETHADATHIL HOUSE, VETTIKKAL DESOM,
MULANTHURUTHY VILLAGE, KANAYANNUR TALUK, ERNAKULAM DISTRICT,
PIN - 682314



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- 3 N.V. MOHANAN
AGED 59 YEARS
S/O VELAYUDHAN ACHARI, NADUVILETHADATHIL HOUSE, VETTIKKAL
DESOM, MULANTHURUTHY VILLAGE, KANAYANNUR TALUK, ERNAKULAM
DISTRICT, PIN - 682314
- 4 N.V SOMAN
AGED 47 YEARS
S/O VELAYUDHAN ACHARI, NADUVILETHADATHIL HOUSE, VETTIKKAL
DESOM, MULANTHURUTHY VILLAGE, KANAYANNUR TALUK, ERNAKULAM
DISTRICT, PIN - 682314

BY ADVS.
JOY C. PAUL
BOBBY GEORGE
ELDHOSE JOY
REEJO JOHNSON
NOBLE GEORGE
VARGHESE K.
Shaji Thomas
JEN JAISON(K/000208/2017)

RESPONDENTS/APPELLANTS/PLAINTIFFS:

- 1 KARIKODE NADUVILETHADAM BHAGAVATHI MARIAMMAN TEMPLE
REPRESENTED BY ITS SECRETARY, SRI SURESH N.M
S/O MANIKANDAN ACHARI, AGED 38 YEARS, NADUVILETHADATHIL
HOUSE, KARIKODE DESOM, MULANTHURUTHY VILLAGE, KANAYANNOOR
TALUK, ERNAKULAM, PIN - 682314
- 2 THE KERALA VISWABRAHMANA SAMOOHAM (REG. NO. T129/1985)
KARIKODE BRANCH NO. 23, REPRESENTED BY ITS SECRETARY,
SRI. RAJESH M UNNIKRIISHNAN
S/O. UNNIKRIISHNAN, AGED 36 YEARS, MALAYIL PUTHENPURAYIL
HOUSE, KUZHIYARA P.O., CHOTTANIKARA, KANAYANNOOR VILLAGE,
KANAYANNOOR TALUK, ERNAKULAM DISTRICT, PIN - 682312



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3 MANI @ PONNAN
 S/O KUNJUPILLA ACHARI, NADUVILETHADATHIL HOUSE, KARIKODE
 DESOM, MULANTHURUTHY VILLAGE, KANAYANNUR TALUK, ERNAKULAM
 DISTRICT, PIN - 682314

BY ADVS.
A.T.ANILKUMAR A.T.
V.SHYLAJA(K/1281/1995)

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON
16.10.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



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JUDGMENT

1. The appellants are the defendants 1 to 4 and the respondents are the plaintiffs & the 5th defendant in O.S No. 1132/2015 before the Trial Court.
2. The 1st plaintiff is a Temple represented by its Secretary and the 2nd plaintiff is a Society represented by its Secretary. OS 1132/15 was filed by the plaintiffs seeking a declaration of title and permanent prohibitory injunction with respect to the plaint schedule property of 2.5 cents of land. According to the plaintiffs, the 1st plaintiff temple came into existence under the leadership and supervision of the 2nd plaintiff in the year 1985. The 1st plaintiff - Temple is in the management of the 2nd plaintiff. The defendants are also members of the 2nd plaintiff. They were the office bearers of the



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2nd plaintiff for a certain period. The plaint schedule property of 2.5 cents, is a Temple/Kavu dedicated by one Sri.Mani @ Ponnann and Smt.Lakshmi Ammal as per Ext.A1 and A2 unregistered documents dated 26.11.1995. The 2nd plaintiff Society took possession of the plaint schedule property, used to conduct poojas and other religious ceremonies in the plaint schedule property. The plaintiffs have got absolute title and ownership over the plaint schedule property by the law of adverse possession and limitation.

3. The defendants 1 to 4 are the children of the said Lakshmi Ammal and the 5th defendant is the said Sri.Mani @ Ponnann. They resisted the suit. The defendants 1 to 4 filed a Written Statement, contending inter alia that they derived title and possession of the plaint schedule property as per Ext.B1 document executed by



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Smt.Lakshmi Ammal. They are also devotees of the 1st plaintiff temple. The plaint schedule property is situated 1.5 km away from the 1st plaintiff temple. The plaintiffs never acquired possession of the plaint schedule property.

4. O.S No. 1132/15 was jointly tried with O.S No.1323/15 instituted by the 3rd defendant in O.S No. 1132/15 against the plaintiffs in O.S.No.1132/2015. O.S. No.1323/15 was also filed seeking a declaration of title and permanent prohibitory injunction with respect to the plaint schedule property of 4.450 cents of land which includes part of the plaint schedule property in O.S. No. 1132/2015. As per plaint averments in O.S. No.1323/15, the plaint schedule property is devolved upon the plaintiff and his brothers on the death of their mother Smt.Lakshmi Ammal.



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5. Both the suits were jointly tried treating O.S. No.1132/2015 as the leading case. The Trial Court disposed of both the suits as per the common judgment dated 31.01.2020, dismissing both the suits.
6. O.S. No.1132/2015 was dismissed holding that though the evidence on record would probabalize the case of the dedication of the property in favour of the 1st plaintiff pleaded by the plaintiffs, the suit as framed in the name of the Temple is not maintainable and the 2nd plaintiff is not proved to be the administrative body of the 1st plaintiff.
7. O.S.No.1323/2015 was dismissed, holding that the plaintiff therein failed to prove the exclusive possession and enjoyment over the plaint schedule property, which is D schedule property in Ext. B1 Partition deed.



8. The plaintiffs in O.S. No.1132/2015 filed A.S. No. 68/2020 before the First Appellate Court. Before the First Appellate Court, the plaintiffs did not press the declaratory relief. The First Appellate Court allowed the appeal in part declaring that the appellants are entitled to get an order of permanent prohibitory injunction restraining the defendants from trespassing into the plaint schedule property and committing any waste or mischief therein and not to prevent or make any obstruction to the plaintiffs of the peaceful possession and enjoyment and discharging the duties of the Temple. The First Appellate Court specifically found that the plaintiffs are in possession of the dedicated property and that they have been performing temple festivals in the disputed Kavu and that there is no evidence that the defendants are in exclusive possession of the disputed Kavu.



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9. When the present Regular Second Appeal at the instance of the defendants 1 to 4 came up for admission, the respondents 1 & 2/plaintiffs in the suit opposed the same, contending that the Regular Second Appeal is not maintainable since the appellants have not challenged the judgment and decree in O.S. No. 1323/2015 before the First Appellate Court and hence the Appeal is barred by the principles of res judicata.

10. I heard the learned Counsel for the appellant Sri. Shaji Thomas and the learned Counsel for the respondents 1& 2 Sri.A.T.Anil Kumar on the question of maintainability of the appeal.

11. At the outset, the counsel for the appellant submitted the maintainability of the appeal need not be considered as that the appellants have already filed AS No.67/2024 before the First



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Appellate Court challenging the judgment and decree in O.S.No. 1323/2015 with an application to condone delay in filing the same. Learned Counsel submitted that the technical objection raised by the respondents that the Regular Second Appeal is barred by res judicata is not sustainable in view of the fact that A.S. No.67/2024 is filed by the appellants challenging the judgment and decree in O.S. 1323/2015. Once A.S. No.67/2024 is dismissed following the judgment in A.S. No. 68/2020, the appellants can maintain another Regular Second Appeal before this Court in order to enable this Court to consider the matter on merits. Even if the Application to condone delay is dismissed and consequently the appeal is dismissed, the Trial Court decree gets merged with the Appellate decree, and the appellants would be able to file a Regular Second Appeal before this Court challenging the



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judgment and decree in AS 67/2024. Counsel cited the Full Bench decision of this Court in **Thampi v Mathew [1987(2) KLT 848]** and the decision of the Hon'ble Supreme Court in **Shyam Sundar Sarma V. Pannalal Jaiswal [(2005) 1 SCC 436]** to substantiate the point that when an appeal is dismissed after dismissing the Application to condone delay, it is in substance and effect confirmation of a decree appealed against it and it could be subject to a second appeal.

12. The learned Counsel for respondents 1 and 2 submitted that it is well settled that when two or more suits are dismissed by a common judgment, the absence of challenge against the said judgment would be a bar for challenging the other judgment and decrees. The learned Counsel cited the decisions of this Hon'ble Court in **Avira Joseph v. Varghese Mathai and others [2010(3)**



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KHC 564], Thomas and others v. Dr. Sudha and others [2010(4) KHC 575], Mathew and others v. Elikkuty and others [2019(2) KHC 160] and Abdulrahiman B.C and another v. P V Abdul Khader and others [2021 KHC 437] to substantiate his contention.

13. It is well settled that when two or more suits have been disposed of by a common judgment, but by separate decrees and where the decree in one suit has been challenged in appeal without challenging the decrees in the other suits, the principle of res judicata would be applicable.

14. In the present case, O.S. Nos. 1132/2015 and 1323/2015 were disposed of by a common judgment entering common findings. O.S. No.1132/2015, filed by the respondents 1 & 2 against the



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appellants and the 3rd respondent, and O.S. No. 1323/2015, filed by the 3rd appellant against the respondents 1 & 2, were dismissed. The respondents 1 & 2 alone challenged the judgment and decree in OS 1132/2015 by filing A.S. No.68/2020 before the First Appellate Court. A.S. No. 68/2020 is allowed in part as per the judgment dated 6.10.2023. Admittedly, the appellants filed A.S. 67/2024 before the First Appellate Court after the disposal of A.S. No. 68/2020 as per the judgment dated 6.10.2023. They thought of challenging the judgment and decree in O.S. 1323/2015 only when they filed the present Regular Second Appeal before this Court. The present Regular Second Appeal is not maintainable if the judgment and decree in O.S. No. 1323/2015 remain unchallenged.



15. Now, the question is whether the present Regular Second Appeal is maintainable in view of the fact that the appellants have filed A.S. No. 67/2024 with an Application to condone delay, challenging the judgment and decree in O.S. No.1323/2015. I am of the view that A.S. No.67/2024 itself is not maintainable at this stage since A.S. No. 68/2020, filed by respondents 1 & 2 before the First Appellate Court, has attained finality. A.S. 67/2024 is barred by res judicata on account of the judgment in A.S. 68/2020.

16. The very purpose of the principle of res-judicata embodied in S.11 of the Code of Civil Procedure is to attain the finality of judicial proceedings. If the appellants were aggrieved by the common judgment passed by the Trial Court the appellant should have filed an Appeal challenging that part of the judgment which is against them before the First Appellate Court at least before the



disposal of A.S. 68/2020 filed by the respondents 1 & 2 before the First Appellate Court.

17. A party has no right to maintain an appeal against the judgment and decree in a suit which is disposed of by a common judgment along with other suits after disposal of appeal/s from the judgment/s and decree/s in the other suit/s disposed of as per the very same common judgment. Such subsequent appeals are clear abuse of the process of the Court. If such subsequent appeals are allowed, it is against the principle of res judicata, and it would be against the very purpose for which the said principle evolved, namely, the finality of the proceedings. The parties would be able to prolong the litigation and re-agitate the matter again and again, one after another. A.S. 67/2024 and the Application to condone delay therein are clear abuse of the process of the Court.



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18. In view of the aforesaid proposition of law, the above Regular Second Appeal is not maintainable in view of the non-challenge of the judgment and decree in O.S. No.1323/2015 of the Trial Court by the appellants. Hence the above Second Appeal is dismissed.

Sd/-

M.A.ABDUL HAKHIM

JUDGE

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