



2024/KER/16740

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

&

THE HONOURABLE MR. JUSTICE C.PRATHEEP KUMAR

MONDAY, THE 4TH DAY OF MARCH 2024 / 14TH PHALGUNA, 1945

MAT.APPEAL NO. 244 OF 2021

AGAINST THE ORDER IN I.A NOS.1119/2019 & 1120/2019 DATED
27.1.2020 IN OP NO.945 OF 2016 OF FAMILY COURT, CHAVARA

APPELLANT/1ST PETITIONER/1ST RESPONDENT:

CASSEL FERNANDEZ
AGED 59 YEARS, S/O.SERAPHIN,
RESIDING AT JOY MANDIRAM, COVIL THOTTAM,
MEKKADU MURI, PANMANA VILLAGE,
KARUNAGAPALLY TALUK, KOLLAM
(ORIGINAL FIRST RESPONDENT).

BY ADV S.SREEKUMAR (KOLLAM)

RESPONDENT/RESPONDENT & PETITIONERS 2-6/

PETITIONER & RESPONDENTS 2-6:

- 1 SENOTRA
AGED 54 YEARS, D/O.CATHERINE,
RESIDING AT HAPPY DALE, NTV NAGAR-43/D,
KADAPPAKADA P.O., VADAKKEVILA VILLAGE,
KOLLAM-691008 (ORIGINAL PETITIONER).
- 2 THRESSIA SERAPHIN,
AGED 77 YEARS, W/O.SERAPHIN,
RESIDING AT JOY MANDIRAM, COVIL THOTTAM,
MEKKADU MURI, PANMANA VILLAGE,
KARUNAGAPALLY TALUK, KOLLAM-691583
(ORIGINAL SECOND RESPONDENT).
- 3 VIMALA,
AGED 39 YEARS, D/O.SERAPHIN,
RESIDING AT JOY MANDIRAM, COVIL THOTTAM,
MEKKADU MURI, PANMANA VILLAGE,
KARUNAGAPALLY TALUK, KOLLAM-691583
(ORIGINAL THIRD RESPONDENT).



4 NIRMALA,
AGED 38 YEARS, D/O.SERAPHIN,
RESIDING AT JOY MANDIRAM, COVIL THOTTAM,
MEKKADU MURI, PANMANA VILLAGE,
KARUNAGAPALLY TALUK, KOLLAM-691583
(ORIGINAL FORTH RESPONDENT).

5 CRASTO,
AGED 44 YEARS, S/O.SERAPHIN,
RESIDING AT JOY MANDIRAM, COVIL THOTTAM,
MEKKADU MURI, PANMANA VILLAGE,
KARUNAGAPALLY TALUK, KOLLAM-691583
(ORIGINAL FIFTH RESPONDENT).

6 MARY,
AGED 41 YEARS, D/O.SERAPHIN,
RESIDING AT JOY MANDIRAM, COVIL THOTTAM,
MEKKADU MURI, PANMANA VILLAGE,
KARUNAGAPALLY TALUK, KOLLAM-691583
(ORIGINAL SIXTH RESPONDENT).

BY ADVS.

ALEXANDER GEORGE

RAJESH. R (RAJESH RAMAMOORTHY) RAMAMOORTHY

SOUMYA FRANCIS (K/000605/2020)

THIS MATRIMONIAL APPEAL HAVING COME UP FOR ADMISSION
ON 27.02.2024, THE COURT ON 04.03.2024 DELIVERED THE
FOLLOWING:



J U D G M E N T

Dated this the 4th day of March, 2024

C. Pratheep Kumar, J.

This appeal is filed by the 1st petitioner in I.A. Nos.1119/2019 and 1120 of 2019 in O.P. No.945 of 2016 on the file of Family Court, Chavara, against the order dated 27.1.2020, dismissing those I.As.

2. The 1st respondent is the wife of the appellant and the other respondents are the in-laws of the 1st respondent. The 1st respondent filed the above OP for recovery of value of gold ornaments and patrimony. Since the respondents in the OP remained *ex-parte*, the same was decreed as per order dated 6.10.2017, allowing her to recover 44 sovereigns of gold ornaments or a sum of Rs.11,00,000/- being its market price along with patrimony of Rs.11,50,000/- with interest @ 6% per annum.

3. The appellant, along with respondents 2 to 6 herein filed I.A. Nos.1119/2019 and 1120/2019 praying for setting aside the *ex-parte* decree and for condoning the delay of 960 days in filing the application for setting aside the *ex-parte* decree.

4. As per the impugned order dated 27.1.2020, the learned Family Court dismissed those IAs on the ground that they have failed to explain



the delay of 960 days in filing the I.A. Aggrieved by the above order, the appellant approached this Court.

5. Now, the point that arise for consideration, is the following:

Whether the impugned order of the Family Court, Chavara, dismissing I.A. Nos.1119/2019 and 1120/2019, is liable to be interfered with, in the light of the grounds raised in the appeal?

6. Heard both sides.

7. The point:

The 1st respondent filed the OP in the year 2016 for return of the value of 44 sovereigns of gold ornaments and patrimony of Rs.11,50,000/-. As per the decree dated 6.10.2017, the Family Court decreed the OP *ex-parte*. Earlier, the OP was filed before the Family Court, Kollam and subsequently, it was transferred to Family Court, Chavara. The contention taken by the appellant before the Trial Court is that he came to know about the *ex-parte* decree only when he received notice in E.P. No.8 of 2019. The Family Court found that, from the proceedings, it is evident that the appellant appeared before the Family Court, Chavara on 7.7.2017. On 21.8.2017 his counsel sought for time for filing objection and the case was adjourned to 13.9.2017 and thereafter, the appellant abandoned the case. It was in the above context,



the respondents in the O.P. were set *ex-parte* and an *ex-parte* decree was passed.

8. On a perusal of the impugned order, it can be seen that there is no merits or *bona fides* in the contention taken by the appellant that he was not aware of the *ex-parte* decree, till he received notice from the execution court. On the other hand, he was aware of the transfer of the OP from the Family Court, Kollam to Family Court, Chavara and he appeared before the Family Court Chavara through counsel and sought for time, for filing counter affidavit and thereafter he abandoned the case. Subsequently, after a long delay of 960 days, he approached the Family Court with a prayer for setting aside the *ex-parte* decree. Because of the above conduct of the appellant, the 1st respondent/wife could not enjoy the fruits of the decree that was passed in her favour.

9. In the above circumstances, considering the entire facts, including the fact that it is an *ex-parte* decree, we hold on the ground of equity, that one more opportunity can be given to the appellant to contest the case on merits, on condition that he has to pay exemplary costs to the 1st respondent.

10. Considering the length of delay and the stake involved in the case and the absence of any valid and sufficient grounds for condoning



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the delay, we hold that a direction to pay cost of Rs.50,000/- will be a reasonable cost in this case. The point answered accordingly.

In the result, the appeal is allowed on terms. The impugned judgment is set aside on condition that the appellant shall pay a cost of Rs.50,000/- (Rupees Fifty Thousand only) to the respondent through counsel, within a period of 15 days from today. In case the appellant fails to comply with the above direction, this appeal will stand dismissed.

Sd/-
ANU SIVARAMAN,
JUDGE

Sd/-
C. PRATHEEP KUMAR,
JUDGE

sou.