

Kerala High Court

Kamamma vs Sankara Pillai on 11 January, 2011

IN THE HIGH COURT OF KERALA AT ERNAKULAM

RSA.No. 624 of 2009()

1. KAMALAMMA, AGED 63 YEARS,
... Petitioner
2. DASAPPAN PILLAI, THULASEEDHARAN PILLAI,
3. DASAPPAN PILLAI BALACHANDRAN
4. DASAPPAN PILLAI SIVANKUTTY, AGED
5. KAMALAMMA USHAKUMARY, AGED 33 YEARS,
6. DASAPPAN PILLAI RAJENDRAN, AGED 30 YEARS
7. DASAPPAN PILLAI, ANILKUMAR, AGED

Vs

1. SANKARA PILLAI, CHELLAPPAN PILLAI,
... Respondent
2. KUTTY AMMA, AGED 82 YEARS,

For Petitioner :SRI.K.S.HARIHARAPUTHRAN

For Respondent :SRI.C.P.PEETHAMBARAN

The Hon'ble MR. Justice S.S.SATHEESACHANDRAN

Dated :11/01/2011

O R D E R

S.S.SATHEESACHANDRAN, J.

R.S.A.NO.624 OF 2009

Dated this the 11th day of January, 2011

J U D G M E N T

The appeal is directed against dismissal of first appeal by the lower appellate court, consequent to the abatement of such appeal on default of the appellant to take steps for impleading the legal heirs of the 2nd respondent, who had passed away pending the first appeal. Suit was one for redemption

and it was decreed in favour of the plaintiff, the 1st respondent before the lower appellate court. On the death of the 1st respondent, the 2nd respondent was impleaded as his legal heir in such appeal. That 2nd respondent had also passed away; but, the appellants/defendants in the suit did not take appropriate steps in time, but moved a petition later to set aside the abatement condoning the delay. The application moved by the appellants for setting aside the abatement having been dismissed by the lower appellate court and appeal dismissed by that court as abated, as if a second appeal would lie, the present appeal has been preferred. The remedy available to the appellants in such a case is to impeach the order passed under Rule 9 of Order XXII of the Code of Civil Procedure by way of an appeal as provided under Order XLIII Rule 1 (k) of the CPC. Realising that the second appeal is not entertainable, the learned counsel for the appellants sought for permission to withdraw the appeal, without prejudice to his right to take recourse to the appropriate proceedings for challenging the adverse decision rendered against him by the court below. The learned counsel requested for a grace period of one month to prefer the appeal against the order of the court below as provided by law. On the facts presented, as I find nothing to hold that there was lack of bona fide on the part of the appellant though the appeal had been presented without taking and considering due notice of the provisions of the law the appellants are accorded permission to prefer an appeal against the adverse order rendered by the court below within a period of one month from the date of this judgment. However, the entitlement of the appellant to seek exemption of the period of prosecution of this appeal under Section 14 of the Limitation Act, shall have to be considered in the fresh appeal if any preferred as proposed.

Appeal is dismissed as withdrawn.

S.S.SATHEESACHANDRAN JUDGE prp