

**(2012) 12 KL CK 0034**  
**In the High Court Of Kerala**  
**Case No : OP (C) No. 4109 of 2011 (O)**

Ponnan Chellappan and Others

APPELLANT

Vs

Ambrose Ernose, Parambuthottathu Valiyavila Veedu, Ayira  
Desom Karode Village 695506 and Others

RESPONDENT

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**Date of Decision :** 05-12-2012

**Acts Referred:**

**Citation :** (2012) 12 KL CK 0034

**Hon'ble Judges :** Thomas P. Joseph, J

**Bench :** Single Bench

**Advocate :** M. Sreekumar, for the Appellant; George Varghese,  
(Perumpallikuttiyl), Sri. A.R. Dileep, Smt. Nava Varghese and Sri. Manu  
Sebastian for R1 To 10, for the Respondent

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## Judgement

Justice Thomas P. Joseph

1. This Original Petition is filed by the appellants in R.F.A. No. 128 of 2011 of the Sub Court, Neyyattinkara for a direction to the learned Second Additional Munsiff, Neyyattinkara to keep in abeyance further proceedings in E.P. No. 401 of 2009 in O.S. No. 342 of 1972 of that court till orders are passed on Ext. P16, application for stay (filed by the petitioners in R.F.A. No. 128 of 2011 of the Sub Court, Neyyattinkara). I have heard the learned counsel for the petitioners and respondents.

2. Petitioners have challenged the final decree in O.S. No. 342 of 1972 of the Second Additional Munsiff's Court, Neyyattinkara in R.F.A. NO. 128 of 2011 of the Sub Court, Neyyattinkara with Ext.P15, application to condone the delay of 3290 days. Along with that appeal the petitioners have also filed Ext.P16, application for stay. On account of the application for condonation of delay pending, they were not able to get orders on Ext.P16, application. Hence this Original Petition. O.P(C) No. 4109 of 2011

3. When the Original Petition came up for hearing on 14.12.2011, this Court

passed an order, having regard to the contentions raised, staying disposal of Ext.P12, application (E.A. No. 607 of 2011 in E.P. No. 401 of 2009 in O.S. No. 342 of 1972 of the Second Additional Munsiff's Court, Neyyattinkara) for a period of one month. That order was being extended further.

4. It is submitted by the learned counsel for the petitioners that the post of Sub Judge, Neyyattinkara was remaining vacant for some time and now an Officer has assumed charge, it is also submitted that Ext.P15, application for condonation of delay now stands posted on 14.12.2012 for hearing. According to the learned counsel since until Ext.P15, application is disposed of, the petitioners are not in a position to request for stay as prayed in Ext.P16, application. It is necessary that the proceeding before the learned Second Additional Munsiff, Neyyattinkara is kept in abeyance for sometime.

5. The learned counsel for the respondents contended that there is absolutely no merit in R.F.A. NO. 128 of 2011, not to say about Ext.P15, application to condone the delay of 3290 days. It is submitted that with the petitioners also on the party array though as respondents, a final decree was passed and that final decree was confirmed in A.s. No. 31 of 2004 of the Sub Court, Neyyattinkara.

6. Of course, the petitioners have their own contentions that those decisions would not bind them and they are aggrieved by the final decree and hence are entitled to challenge that final decree in R.F.A. No. 128 of 2011.

7. I need not in this proceeding go into the contentions raised as to the sustainability of R.F.A. NO. 128 of 2011 and the merit of the case.

8. Since Ext.P15, application has not so far been disposed of, the petitioners are not in a position to request for stay on whatever ground they have urged in Ext.P16, application.

9. As aforesaid, this Court has passed an order on 14.12.2011 directing that disposal of Ext.P12, application will stand in abeyance for a period of one month and that order was being extended thereafter. Having heard the learned counsel on both sides I am inclined to direct that the said order will remain in force until 20.12.2012 or till the learned Sub Judge, Neyyattinkara disposes of Ext.P16, application, whichever is earlier. I make it clear that I have not expressed any opinion as to the merit of the contentions raised in Ext.P15 or P16, applications in R.F.A. No. 128 of 2011 and direct the learned Sub Judge to dispose of Exts. P15 and P16 untrammelled by any observation contained in the order dated 14.12.2011 or in this judgment.

Resultantly, the Original Petition is disposed of as under:

It is directed that disposal of Ext.P12, application (E.A. No. 607 of 2011 in E.P. No. 401 of 2009 in O.S. No. 342 of 1972 of the Second Additional Munsiff's Court, Neyyattinkara) will stand in abeyance till 20.12.2012 or till Exts.P16, application is disposed of, whichever is earlier.