

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

WEDNESDAY, THE 6TH DAY OF APRIL 2022 / 16TH CHAITHRA, 1944

OP(C) NO. 2322 OF 2021

(AGAINST THE ORDER DATED 19.11.2021 PASSED IN OS NO.368/2014

ON THE FILE OF THE MUNSIF'S COURT, CHITTUR)

PETITIONERS/DEFENDANT NO.2, 10 & 12:

- 1 BHAGAVATHIAPPAN. R,
S/O LATE RAMASWAMY KOUNDER, AGED 75, WEST STREET,
CHAMMANAMPATHY MAIN ROAD, UDAYAMKULAM P.O, POLLACHI
TALUK, COIMBATORE DIST - 642 129.
- 2 VENI @ KRISHNAVENI,
W/O LATE SELVAKUMARASWAMY, AGED 63,
CHAMMANAMPATHY, UTHRABHAGAVATHI AMMAN KOVIL,
THOTTAM, PUTHUR POST, MARAPPAKOUNDER, POLLACHI
TALUK, COIMBATORE DIST - 642 103.
- 3 KEERTHIRAM,
S/O LATE SELVAKUMARASWAMY, AGED 31,
CHAMMANAMPATHY, UTHRABHAGAVATHI AMMAN KOVIL,
THOTTAM, PUTHUR POST, MARAPPAKOUNDER, POLLACHI
TALUK, COIMBATORE DIST-642 103.

BY ADVS.

SAJAN VARGHEESE K.

LIJU. M.P

JOPHY POTHEEN KANDANKARY

RESPONDENTS/PLAINTIFF & DEFENDANTS NO.1,3,5 TO 9 & 11:

- 1 BHARATHAMANI, W/O SHANMUGHAVEL, AGED 69, 3/155,
ERUMAPATTY P.O, ALAPALAYAM, POLLACHI TALUK,
COIMBATORE DISTRICT - 642 120.
- 2 PUSHPABHAGAVATHY, W/O RAMALINGAKOUNDER, AGED 79,
KATHIRVEL, ANNANTHOTTAM, MARAPPAKOUNDER PUTHUR XI,
CHAMMANAMPATHY, MG PUTHUR P.O, POLLACHI TALUK,
COIMBATORE DISTRICT - 642 103.
- 3 RATHINABHAGAVATHY, W/O K. THIRUMALA KOUNDER, AGED
73,RESIDING AT GANDHI ASRAMAM KALAM, GANDHI ASRAMAM
VILLAGE, GANAPATHY PALAYAM P.O, POLLACHI TALUK,
COIMBATORE DISTRICT - 642 103.

- 4 BALASUBRAHMANYAN,
S/O CHELLAMUTHUKOUNDER, AGED 77 YEARS, RESIDING AT
BLOCK 1/26, POOKULAM, POOKULAM P.O, UDUMALPETTA
TALUK, THIRUPPUR DISTRICT - 642 154.
- 5 MUTHUKUMAR,
S/O BALASUBRAMANIAN, AGED 55, RESIDING AT BLOCK
1/26,POOKULAM, POOKULAM P.O, UDUMALPETTA TALUK,
THIRUPPUR DISTRICT -642154.
- 6 PRABHAKAR,
S/O BALASUBRAHMANIAN, AGED 52, RESIDING AT 16/14,
KURUNJI NAGAR, STATE BANK COLONY, UDUMALPETTA,
THIRUPPUR DISTRICT - 642 126.
- 7 SELVAKUMAR,
S/O VELUSWAMIKOUNDER, AGED 59, 3/65,
NARASINGAPURAM, MANNUR P.O, POLLACHI
TALUK, COIMBATORE DIST - 642 005.
- 8 PAZHANISWAMY,
S/O BANGLAPONNUSWAMIKOUNDER, AGED 54, PERIYAPOTH
POST, POLLACHI TALUK, COIMBATORE DIST - 642 103.
- 9 KIRTHIKA,
D/O LATE SELVAKUMARASWAMY, AGED 31,
CHAMMANNAMPATHY, UTHRABHAGAVATHI AMMAN KOVIL,
THOTTAM, PUTHUR POST, MARAPPAKOUNDER, POLLACHI
TALUK, COIMBATORE DIST - 642103.

BY ADVS.
RAJESH SIVARAMANKUTTY
ARUL MURALIDHARAN

THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON
23.03.2022, THE COURT ON 06.04.2022 DELIVERED THE FOLLOWING:

“C.R”

A. BADHARUDEEN, J.

O.P.(C) No.2322 of 2021

Dated this the 6th day of April, 2022

JUDGMENT

Defendants 2, 10 and 12 in O.S.No.368/2014 on the file of the Munsiff Court, Chittur, have filed this Original Petition under Article 227 of the Constitution of India. The respondents herein are the plaintiff and other defendants.

2. The questions arise for consideration in this case are:

i) what is the court fee payable when a prayer for declaring that the purchase certificate obtained by the co-owner would enure to the benefit of all co-owners/legal-heirs?

(ii) what is the court fee payable for declaring a purchase

certificate issued by the Land Tribunal as null and void, in a Suit for partition?

3. Heard both sides in detail.

4. Brief facts: O.S.No.368/2014 was filed by the plaintiff originally, seeking partition of the plaint schedule properties by metes and bounds. Thereafter the plaint got amended and 2 more prayers were incorporated. The prayers are 'AA' and 'AB'. But by way of amendment, for the reliefs 'AA' and 'AB', the subject matter is valued at Rs.1,000/- each and court fee to the tune of Rs.40/- each were paid under Section 25(d) of the Kerala Court Fees and Suit Valuation Act.

5. The learned Munsiff raised an additional issue to decide the question of valuation and court fee, on the basis of contention raised by the defendants in the Suit. Thereafter, the Munsiff found that the valuation and court fee paid are correct.

6. The petitioners herein assail the said order. It is argued

by the learned counsel for the petitioner that since the subject matter being capable of valuation and the plaintiff valued the market value of the property based on its annual income at Rs.5,40,000/-, the plaintiff shall have to pay court fee in accordance with the said valuation.

7. Per contra, the learned counsel for the petitioners would submit that there is no need to pay court fee on the basis of the market value of the property and the valuation shown and the court fee paid in this matter are correct.

8. The learned counsel for the petitioners placed decision reported in [(2010) 5 SCC 622], *Satheedevi v. Prasanna & anr.* In the said decision, the Apex Court considered payment of court fee in relation to declaration regarding cancellation of a document. Ultimately it was held that court fee payable under Section 41 of the Kerala Court Fees and Suits Valuation Act, 1959 is based on the value of the property for which the document was executed and not

its market value.

9. In another decision reported in [AIR 2010 SC 2807], ***Suhrid Singh @ Sardool Singh v. Randhir Singh & Ors.***, the Apex court carved out a difference between a prayer for cancellation and declaration in regard to a deed of transfer/conveyance by illustrating 2 instances as extracted in para.6 of the above judgment. For clarity, I am inclined to extract para.6 as such:

"6. Where the executant of a deed wants it to be annulled, he has to seek cancellation of the deed. But if a non-executant seeks annulment of a deed, he has to seek a declaration that the deed is invalid, or non est, or illegal or that it is not binding on him. The difference between a prayer for cancellation and declaration in regard to a deed of transfer/conveyance, can be brought out by the following illustration relating to 'A' and 'B' – two brothers. 'A' executes a sale deed in favour of 'C'. Subsequently 'A' wants to avoid the sale. 'A' has to sue for cancellation of the deed. On the other hand, if 'B', who is not the executant of the deed, wants to avoid it, he has to sue for a declaration that the deed executed by 'A' is invalid/void and nonest/illegal and he is not bound by it. In essence both may be suing to have the deed set aside or declared as non-binding. But the form is different and court-fee is also different. If 'A', the executant of the deed, seeks cancellation of the deed, he has to pay ad-valorem court-fee on

the consideration stated in the sale deed. If 'B', who is a non executant, is in possession and sues for a declaration that the deed is null or void and does not bind him or his share, he has to merely pay a fixed court-fee of Rs.19.50 under Article 17(iii) of Second Schedule of the Act. But if 'B', a non-executant, is not in possession, and he seeks not only a declaration that the sale deed is invalid, but also the consequential relief of possession, he has to pay an ad valorem court-fee as provided under Section 7(iv)(c) of the Act. Section 7(iv)(c) provides that in suits for a declaratory decree with consequential relief, the court-fee shall be computed according to the amount at which the relief sought is valued in the plaint. The proviso thereto makes it clear that where the suit for declaratory decree with consequential relief is with reference to any property, such valuation shall not be less than the value of the property calculated in the manner provided for by clause (v) of Section 7."

In another decision reported in [2012 (3) KLT 261], ***Usman Kurikkal v. Parappur Achuthan Nair***, this Court held that non executant suing for a declaration that the deed as null or void and does not bind his share, need not pay advalorem court fee on the consideration fixed therein and the valuation shall be done under Section 25(d)(ii) of the Court Fees and Suits Valuation Act, 1959.

10. In fact, Section 25(d)(ii) provides that in a suit for a declaratory decree or order, whether with or without consequential relief, not falling under Section 25(a) to (c), where the subject-

matter of the suit is not capable of valuation, fee shall be computed on the amount at which the relief sought is valued in the plaint or on rupees one thousand, whichever is higher. In fact, Section 25(d) (ii) has no application to the present case, since the subject matter herein is capable of valuation as admitted by the plaintiffs by valuing 'B' relief @ Rs.5,40,000/-, being the agricultural annual income derived from the plaint schedule property.

11. Another decision reported in [1986 KLT 794], ***Sankaran v. Velukkutty***, has been placed to contend that in a suit for partition with prayer for declaration that a settlement deed is invalid and not binding on the plaintiff or plaint schedule properties, separate court fee is not necessary for the said declaration. Applying the said ratio, no court fee payable in relation to the relief 'AB'.

12. In fact, the legal position as settled in ***Suhrid Singh @ Sardool Singh v. Randhir Singh & Ors.***' case (*supra*) is not in dispute. Otherwise, it has to be held that if an executant of a deed

seeks cancellation of the deed, he has to pay advalorem court fee on the consideration stated in the sale deed and if a non executant is in possession and seeks for a declaration that the deed is null or void and does not bind on him or his share, he has to merely pay a fixed court fee, as provided under the relevant provisions of the Court Fees and Suits Valuation Act. However, how far this ratio would apply to the facts of the case, required to be addressed.

13. Thus it appears that when cancellation or declaration of a document is null and void is sought for, except in a Suit for partition as directed in *Sankaran v. Velukkutty's* case (*supra*), court fee shall be paid valuing the same on the basis of the value shown in the document. However, coming to purchase certificate, the value could not be found. Section 7 of the Kerala Court Fees and Suits Valuation Act provides for determination of market value. Section 7 is extracted hereunder:

“7. Determination of market value:-- (1) save as otherwise provided, where the fee payable under this Act depends

on the market value of any property, such value shall be determined as on the date of presentation of the plaint.

(2) The market value of agricultural land in suits falling under Section 25(a), 25(b), 27(a), 29, 30, 37(1), 37(3), 38, 45 or 48 shall be deemed to be ten times the annual gross profits of such land where it is capable of yielding annual profits minus the assessment if any made to the Government.

(3) The market value of a building shall in cases where its rental value has been entered in the registers of any local authority, be ten times such rental value and in other cases the actual market value of the building as on the date of the plaint.

[(3A) The market value of any property other than agricultural land and building falling under sub-sections (2) and (3) shall be the value it will fetch on the date of institution of the suit.]

(4) Where the subject-matter of the suit is only a restricted or fractional interest in a property, the market value of the property shall be deemed to be the value of the restricted or fractional interest and the value of the restricted or fractional interest shall bear the same proportion to the market value of the absolute interest in such property as the net income derived by the owner of the restricted or fractional interest bears to the total net income from the property.”

14. Here both sides admitted that the total extent of property described in the plaint schedule is 36.833 acres. Out of which, an extent of 12.15 acres is covered by purchase certificate in 2597/1977 relating to the relief AA. Similarly, 14.42 acres is

covered by O.A.5126/1972 relating to `AB' relief. 10.33 acres is covered by purchase certificate in S.M.2597/1977.

15. In this context, the learned counsel for the petitioners would submit that, for `AA' relief, the amount corresponding to Rs.5,40,000/- (valued for 36.833 acres) in respect of 12.15 acres property to be paid under Section 25(d)(i). Similarly, in respect of 12.42 acres of property relating to `AB' relief, the value corresponding to the said extent of land in tune with Rs.5,40,000/- shall have to be paid under Section 25(d)(i). I am not inclined to accept the said contention as such in relation to `AB' relief, but it can be accepted in relation to `AA' relief. Since the relief `AB' is one covered by the ratio in *Sankaran v. Velukkutty's* case (*supra*), no specific court fee is payable to the said relief. As far as `AA' relief is concerned, the same is pertaining to 12.15 acres of land and therefore the plaintiff shall have to pay court fee after assessing the valuation in consonance with the total valuation of

Rs.5,40,000/- under Section 25(d)(i) of the Kerala Court Fees and Suits Valuation Act. Therefore, the order of the Munsiff holding otherwise requires interference. Therefore, the said order is set aside.

16. In the result, the Original Petition stands allowed.

17. The order impugned is set aside. The learned Munsiff is directed to re-consider the impugned order and pass fresh order after considering the law discussed on the point herein above.

Registry is directed to forward a copy of this judgment to the Munsiff Court, Chittur, for information and compliance, without delay.

Sd/-

(A. BADHARUDEEN, JUDGE)

rtr/

APPENDIX OF OP(C) 2322/2021

PETITIONERS' EXHIBITS

- Exhibit - P1** TRUE COPY OF THE PLAINT IN OS NO.368/2014 ON THE FILE OF THE MUNSIFF'S COURT, CHITTUR.
- Exhibit - P2** TRUE COPY OF THE WRITTEN STATEMENT FILED BY THE DEFENDANTS NO. 2 AND 4 IN EXHIBIT P1 SUIT.
- Exhibit - P3** TRUE COPY OF THE ADDITIONAL WRITTEN STATEMENT FILED BY THE DEFENDANTS NO 2,10,11 AND 12 IN EXHIBIT P1 SUIT.
- Exhibit - P4** TRUE COPY OF THE ORDER DATED 19-11-2021 PASSED IN EXHIBIT P1 SUIT.