

OP(C) No. 2832 of 2018

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.S.DIAS

TUESDAY, THE 6TH DAY OF DECEMBER 2022 / 15TH AGRAHAYANA, 1944

OP(C) NO. 2832 OF 2018

AGAINST THE ORDER/JUDGMENT IN IA NOS 4438/2014, 3721/2015 AND 412/2016

IN OS 2/2014 OF THE FIRST ADDITIONAL DISTRICT COURT, THRISSUR

PETITIONER/S:

K.G.SUNIL KRISHNAN,
S/O LATE K.K.GOVINDAN, KARATTUPARAMBIL HOUSE, CHIRAKKACODE
VILLAGE AND DESOM, THRISSUR TALUK-680 684.

BY ADVS.
N.N.SUGUNAPALAN (SR.)
SRI.S.SUJIN

RESPONDENT/S:

K.G.PREMSANKAR,
S/O LATE GOVINDAN, KATTUPARAMBIL HOUSE, RETIRED DIRECTOR
GENERAL OF POLICE, RESIDING BEHIND BIG BAZAR.P.O,
CHEMBUKAVU, THRISSUR.

BY ADVS.
SRI.LEGITH T.KOTTAKKAL
SRI.KODOOTH SREEDHARAN

THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 06.12.2022, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

‘C.R’**C.S DIAS,J.**

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Dated this the 6th day of December, 2022.**JUDGMENT**

What is the court fee to be paid on an application for probate/letters of administration is the question posed in the original petition.

2. The plaintiff in O.S No.2/2014 of the Court of the First Additional District Judge, Thrissur (court below) has assailed Ext P8 order in the original petition. The respondent is the brother of the petitioner and defendant in the suit.

3. The relevant background facts leading to Ext P8 order are;

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(i) The petitioner had filed LAOP No.577/2013 before the court below under Sec.278 of the Indian Succession Act to issue letters of administration in respect of the Will executed by his father – late K.K Govindan.

(ii) The petitioner valued the original petition at Rs.50,000/- and paid a court fee of Rs.6,000/- under Sec.56 read with Article 6 of Schedule I of the Kerala Court Fees and Suit Valuation Act, 1959 (in short ‘Court Fees Act’).

(iii) The respondent has filed Ext P2 objection, inter alia, disputing the Will, the valuation of the original petition and the court fee paid.

(iv) In view of the Ext P2 objection, the court below converted the original petition to a suit i.e., O.S.No.2/2014.

(v) The petitioner filed IA No.4438/2014 (Ext P3), volunteering to pay the requisite court fee on the fair value of the property covered by the Will.

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(vi) Subsequently, the petitioner filed IA No.3721/2015 (Ext P4), seeking leave to amend the valuation portion of the plaint. The respondent opposed Ext P4 application by filing Ext P5 objection. The court below, by Ext P6 order, dismissed Ext P4 application.

(vii) Later, the petitioner filed IA No.412/2016 (Ext P7) to amend the relief and valuation portion of the plaint. The court below again, by the impugned Ext P8 order, dismissed Ext P7 application.

(viii) Ext P8 is *ex facie* illegal, improper and irregular. Hence, the original petition.

4. The respondent has filed a counter affidavit denying the allegations in the original petition. The respondent has contended that the valuation of the plaint is incorrect. Ext.R1(e) fair value notification substantiates the value of the property. The respondent had filed I.A.No.4438/2014 to hear

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the question of valuation as a preliminary issue. By Ext.P3 order, the court below permitted the petitioner to value the plaint, which was not done. Instead, the petitioner filed Ext P4 application to amend the plaint, with the sole intention to protract the payment of the court fee. The respondent has also filed Ext.R1(f) court fee statement. Accepting the respondent's contention, the court below, by Ext P 6 order, had directed the petitioner to pay the requisite court fee under Section 25 (a) of the Court Fees Act. Exts. P3 and P6 orders have become final and conclusive. It is to indirectly get over the said orders, the petitioner had filed Ext.P7 application, which again was opposed by the respondent. The court below has rightly rejected Ext P7 application by the impugned Ext P8 order. The petitioner is estopped from challenging Ext P8 order without assailing Exts.P3 and P6 orders. The original petition is meritless and may be dismissed.

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5. Heard; Sri.N.N.Sugunapalan, the learned Senior Counsel appearing for the petitioner and Sri. Kodoth Sreedharan, the learned Counsel appearing for the respondent.

6. The petitioner had filed LAOP No.577/2013 to issue letters of administration in respect of the Will executed by the father of the petitioner and the respondent. The respondent resisted the original petition through Ext.P2 objection, disputing the Will.

7. This Court has framed Rules under the Indian Succession Act 1925. It is profitable to extract Rule 26 of the Rules, which reads thus:

“26. Conversion of application into suit.-- Upon the affidavit in support of the caveat being filed, notice whereof shall simultaneously be given by the caveator to the petitioner. The proceedings shall be ordered by the Court to be numbered as a suit in which the petitioner for probate or Letters of Administration shall be the plaintiff and the caveator shall be the defendant, the petition for probate or Letters of Administration being registered as and deemed as a plaint filed against the caveator, and the affidavit filed by the caveator being treated as his written

statement in the suit. The procedure in such suit shall, as nearly as may be, be according to the provisions of the Code.”

8. In the light of Ext P 2 objection and following the procedure laid down under Rule 26 of the Indian Succession Rules (Kerala), 1968, the court below converted the original petition to a suit.

9. The respondent has also specifically contended in Ext P2 objection that the plaint is undervalued and the petitioner has not paid the requisite court fee as per the market value of the property.

10. The court below, by Ext.P3 order, permitted the petitioner to correct the valuation portion of the plaint and pay the proper court fee. Instead of paying the court fee, the petitioner filed Ext.P4 application to amend the valuation portion of the plaint, to increase the market value of the property from Rs.50,00,000/- to Rs.3,21,47,561, and pay a court fee of Rs.1,60,500/- in place of Rs.50,000/- paid under

Article 6 of Schedule I of the Court Fees Act. The respondent resisted the application by filing Ext.P5 counter statement, inter alia, contending that the petitioner has not shown the value of the building worth more than Rs.30/- lakh and that the plaint is to be valued under Section 25(a) or 25 (d)(i) of the Court Fees Act.

11. By Ext.P6 order, the court below held that as the original petition is converted to a suit, court-fee is to be computed under Section 25 (a) read with Article 1 of Schedule I of the Court Fees Act. Accordingly, the court below dismissed Ext P 4 application with liberty to the petitioner to properly value the plaint and pay the court fee.

12. The petitioner then filed Ext.P7 application, seeking leave to amend the prayer portion of the plaint and increase the value of the property.

13. The court below, by the impugned Ext.P8 order, dismissed Ext.P7 application by observing as follows:

“Admittedly the suit was filed on 17.08.13 as LAOP 577/13 and later converted as OS 2/14 on 02.04.14. Admittedly, the Respondent/Defendant strongly opposed the prayer on the main ground that it is so filed only with the hidden intention to escape from the liability of remitting required Court Fee. Defendant filed a Court Fee Statement on 30.10.15 also. Anyhow it is seen that the Applicant/Plaintiff had earlier filed IA 3721/15 u/o VI Rule 17 of CPC for the amendment of valuation portion and that was dismissed by my learned predecessor-in-office as per Order dtd. 07.01.16. He also filed another Application as IA 3722/15 u/s 151 of CPC to grant three months time to remit balance Court Fee. The Court Fee calculated in the Petition is Rs. 50000/-. It can be gathered from the Order Sheet, even after granting more than sufficient chances the Applicant/Plaintiff failed to remit Court Fee and one or other reason dragged on as far as he can. IA 3721/15 and 3722/15 were dismissed with the strict direction to remit Court Fee and even then the applicant failed to remit balance Court Fee. It is seen from the records that Respondent/ Defendant filed IA 754/14 with the request to direct the Applicant/ Plaintiff for a proper valuation and for the remittance of balance Court Fee. Now this IA is filed on 22.01.16 and till today balance of Court Fee not remitted. After going through the amendment sought for and also considering the Counter filed by the Respondent/ Defendant,

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I am convinced that the prayer is if allowed then it will change the character of the suit and also will cause prejudice to the other side. Hence it is to be noted that the LAOP 577/13 was converted as OS 2/14, so I feel that in such a circumstances the Applicant/Plaintiff cannot exploit that situation there by to escape from the remittance of required Court Fee. After going through the averments in the Application, and also considering the amendment sought for, I also feel that it is only a clever attempt of the Applicant/Plaintiff with a view to escape from the liability of remitting Court Fee in the Suit. I also satisfied that the prayer in this Application are not allowable as they are asked without any bonafide. In this circumstances, I am of the opinion that the prayer at any stretch of imagination cannot allowed, as it is obvious that it is filed as experiment so as to escape from remitting the required Court Fee. In these circumstances I am not inclined to allow the prayer.

Accordingly dismissed without costs.”

14. Chapter VI of the Kerala Court-Fees and Suits Valuation Act, 1959 deals with the manner in which court fee is to be computed and paid on applications filed for probate, letter of administration and certificate of administration. It is apposite to extract Sections 55 and 56 of the Court Fees Act, which reads as follows:

“55.Application for probate or letters of administration.-

(1) Every application for the grant of probate or letters of administration shall be accompanied by a valuation of the estate in duplicate in the form set forth in Part I of Schedule III.

(2) On receipt of such application, the Court shall send a copy thereof and of the valuation to the Collector of the district in which the estate is situated, or if the estate is situated in more than one district, to the Collector of the district in which the most valuable portion of the immovable property included in the estate is situated.

56.Levy of fee.-

(1) The fee chargeable for the grant of probate or letters of administration shall comprise—

a fee at the rate or rates prescribed in Article 6 of Schedule I, computed—

(a)where the application is made within one year of the date of death of the deceased, on the market value of the estate on such date; or

(b)where the application is made after the expiry of one year from such date, on the market value of the estate on the date of the application:

Provided that property held in trust not beneficially or with general power to confer a beneficial interest shall not be liable to any fee under this chapter.

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Explanation.- Any member of a joint Hindu family governed by the Mitakshara Law who applies for probate or letters of administration in respect of the estate of a deceased member of the joint family shall pay a fee on the value of the share in the joint property which the deceased would have received if a partition of the property had been made immediately before his death.

(2) For the purpose of the computation of fee—

(a) the value of the items mentioned in Annexure B to Part I of Schedule III shall be deducted from the value of the estate:

Provided that, when an application is made for probate or letters of administration in respect of part only of an estate, no debt, no expenses connected with any funeral rites or ceremonies and no mortgage encumbrance on any part of the estate other than that in respect of which the application is made shall be deducted:

Provided further that when, after the grant of a certificate under Part X of the Indian Succession Act, 1925 (Central Act XXXIX of 1925), in respect of any property included in an estate, a grant of probate or letters of administration is made in respect of the same estate, the fee payable in respect of the latter grant shall be reduced by the amount of the fee paid in respect of the former grant;

(b) the power of appointment which the deceased had over a property or which was created under a 'Will' shall be taken into account, the value being taken to be the value of the property forming the subject-matter of the power.

15. The above provisions clearly specify that whenever an application for the grant of probate or letters of administration is filed, the same has to be accompanied by a valuation statement of the estate in the form set forth in Part I of Schedule III of the Court Fees Act, and court fee is to be paid under Article 6 of Schedule I of the Court Fees Act.

16. Article 6 of Schedule I of the Court Fees Act reads as follows:

“6. Probate of a will or letters of administration
with or without will annexed—

i) When the amount or value of the estate in respect of which the grant of probate or letters is made does not exceed rupees ten million	One per centum on such amount or value
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When such amount or value exceeds rupees ten million	Half a per centum on such amount or value.
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17. However, whenever there is a contest, as contemplated under Rule 26 of the Indian Succession Rules (Kerala), 1968, the original petition is to be converted to a

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suit, and the court fee is to be paid under Article 11 (k) of Schedule II of the Court Fees Act.

18. Article 11 (k) of Schedule II of the Court Fees Act reads thus:

- “11 (k) (i) Application for probate or letters of administration to have effect throughout India. Rs.50/-
(ii) Application for probate or letters of administration not falling under clause (i)-
(1) if the value of the estate does not exceed Rs.1,000; Rs.1/-
(2) if the value exceeds Rs.1,000: Rs.5/-

Provided that if a caveat is entered and the application is registered as a suit, one-half the scale of fee prescribed in Article 1 of Schedule 1 on the market value of the estate less the fee already paid on the application shall be levied.”

19. In **Pappoo v. Kuruvila [1982 KLT 255]**, this Court has held that the proviso to Article 11 (k) of Schedule II of the Court Fees Act applies to both clauses (i) and (ii).

20. So, in an uncontested application falling under Section 56 of the Court Fees Act, the court fee is to be paid under Article 6 of Schedule I of the Act and in a contested application, the court fee is to be paid under Article 11 (k) of

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Schedule II of the Act, i.e., one half of the scale of fees prescribed under Article 1 of Schedule I of the Court Fees Act.

21. A similar view has been taken by this Court in **Elsy v. V.K.Raju [2006 (4) KLT 890]**.

22. In the above conclusion, the finding of the court below, in Ext.P6 order, that the petitioner has to pay court fee under Section 25(a) of the Act read with Article 1 Schedule I of the Court Fees Act is incorrect and wrong.

23. The question does not end here because Section 55 of the Court Fees Act mandates that every application for probate or letters of administration is to be accompanied by a valuation of the estate in the form set forth in part 1 of schedule III of the Act. And on the filing of such an application, it is obligatory on the part of the Court to forward a copy of the valuation statement to the Collector and call for

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a report regarding the valuation of the property. The manner in which the inquiry is to be conducted is delineated in Sections 59 and 60 of the Court Fees Act.

24. In the instant case, undisputedly, neither has the petitioner filed the valuation statement of the properties nor was an enquiry conducted by the Collector as stipulated under the Court Fees Act. Instead, the court below has directed the court fee to be paid on the disputed valuation statement filed by the petitioner without following the procedure laid down in the Court Fees Act. Therefore, it is only to be held that the entire procedure and the directions passed by the court below are erroneous and wrong. Consequentially, Exts.P3, P6 and P8 orders warrant to be interfered under Article 227 of the Constitution of India.

Resultantly, the original petition is allowed in the following manner:

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- (i) Exts.P3, P6 and P8 orders are set aside.
- (ii) Exts.P4 and P7 applications are dismissed.
- (iii) The parties are directed to appear before the court below on 03.01.2023.
- (iv) The petitioner is directed to file a valuation statement as prescribed under Section 55 of the Court Fees Act read with Part I of Schedule III of the Act on or before 09.01.2023.
- (v) The court below is directed to forward the valuation statement to the District Collector, Thrissur, who shall conduct an inquiry as provided under Section 59 of the Court Fees Act and file his report within three months from the date of receipt of the statement from the court below.
- (vi) On the District Collector filing the valuation report before the court below, the petitioner shall pay

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one-tenth of the court fee as provided under Article 1 Schedule I of the Act within one month and the balance court fee within 15 days after the framing of issues or within such extended period fixed by the court below.

(vii) As the original petition is of the year 2013, the court below shall make an endeavour to consider and dispose of the suit, in accordance with law, as expeditiously as possible.

Sks/28.11.2022

SD/-
C.S.DIAS, JUDGE

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APPENDIX OF OP(C) 2832/2018

PETITIONER EXHIBITS

- EXHIBIT P1 TRUE COPY OF L.A.O.P.NO.577 OF 2013 IN THE COURT OF HON'BLE DISTRICT JUDGE, THRISSUR.
- EXHIBIT P2 TRUE COPY OF OBJECTION TO EXT.P1 APPLICATION FILED BY THE RESPONDENT IN THE COURT OF HON'BLE DISTRICT JUDGE, THRISSUR.
- EXHIBIT P3 TRUE COPY OF THE ORDER DATED 16.09.2015 IN IA NO.4438/2014 IN OS NO.2/2014 IN THE COURT OF HON'BLE DISTRICT JUDGE, THRISSUR.
- EXHIBIT P4 TRUE COPY OF IA NO.3721/2015 IN O.S.NO.2/2014, L.A.O.P.NO.577 OF 2013 IN THE COURT OF HON'BLE DISTRICT JUDGE, THRISSUR.
- EXHIBIT P5 TRUE COPY OF THE OBJECTION FILED BY THE RESPONDENT IN IA NO.3721/2015 IN O.S.NO.2/2014 IN THE COURT OF HON'BLE DISTRICT JUDGE, THRISSUR.
- EXHIBIT P6 TRUE COPY OF ORDER DATED 07.01.2016 DISMISSED I.A.NO.3721/2015 IN LAOP NO.577 OF 2013 IN O.S.NO.2/2014 IN THE COURT OF HON'BLE DISTRICT JUDGE, THRISSUR.
- EXHIBIT P7 TRUE COPY OF I.A.NO.412/2016 IN O.S.NO.2/2014 IN THE COURT OF HON'BLE DISTRICT JUDGE, THRISSUR.
- EXHIBIT P8 TRUE COPY OF THE ORDER DATED 31.07.2018 IN I.A.NO.412/2016 IN O.S.NO.2/2014 IN THE COURT OF HON'BLE DISTRICT JUDGE, THRISSUR.

RESPONDENTS EXHIBITS

R1(a) - COPY OF PETITION IA 754/2014 IN LAOP 577/2013 OF DISTRICT COURT, THRISSUR

R1(b)- COPY OF OBJECTION IN IA 754/2014 IN LAOP 577/2013 OF THE DISTRICT COURT, THRISSUR

R1(c)- COPY OF THE WRITTEN STATEMENT IN OS 2/2014 OF THE DISTRICT COURT, THRISSUR

R1(d) - COPY OF FAIR VALUE NOTIFICATION NO.K-13430/08 DATED 14.12.2009

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R1(e)- COPY OF THE PETITION IA 4438/2014 IN OS 2/2014 OF THE DISTRICT COURT, THRISSUR

R1(f) COPY OF THE COURT-FEE STATEMENT IN IA 3721/2014 IN OS 2/2014 OF THE DISTRICT COURT, THRISSUR

R1(g) - COPY OF OBJECTION IN IA 412/2016 IN OS NO.2/2014 OF THE DISTRICT COURT, THRISSUR

R1(h)- COPY OF THE ORDER DATED 7.1.2016 IN IA 3722/2015 IN LAOP 577/2013 IN OS 2/2014 OF THE DISTRICT COURT, THRISSUR.