

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

MONDAY, THE 23RD DAY OF FEBRUARY 2015/4TH PHALGUNA, 1936

OP(C).No. 824 of 2012 (O)

**AGAINST THE ORDER IN IA NO.1942/2011 IN OS 135/2007 of PRINCIPAL SUB COURT,
ATTINGAL DATED 14-02-2012.**

PETITIONER/PLAINTIFF :

**PRIYANKA, D/O. SURENDRA BABU,
KRISHNA PRABHA, NEAR MUNICIPAL OFFICE,
MUNDAYIL DESOM, VARKALA.**

**BY ADVS.SRI.S.M.PREM.
SMT.K.P.SANTHI.
SRI.P.K.NIJOY.
SMT.MINU K. SANU.**

RESPONDENT(S)/DEFENDANTS:

- * 1. JAYAKRISHNAN, K.N. VIHAR,
KURAKKANNI, VARKKALA-695 141.**
- 2. PAVITHRAN, SUGATHA NIVAS,
KURAKKANNI, VARKAL-695 141.**
- 3. UDAYAKUMAR, VAYALIL VILAKAM VEEDU,
ANATHALAVATTOM, CHIRAYINKIL-695 304.**
- 4. BEENA MOHAN, SUGATH NIVAS,
KURAKKANNI, VARKALA-695 141.**
- 5. SUNIL KUMAR,SAROJAM,
THIRUMULLAVARAM, KOLLAM-691 012.**
- 6. SAJU, GOPI NIVAS, ATTINGAL,
AVANAVANCHERRY VILLAGE-695 101.**
- 7. VARUN, KRISHNAPRABHA,
NEAR MUNICIPAL OFFICE, MUNDAYIL, VARKALA-695 141.**
- 8. SACHU, PLAMTHOTTAM VEDU,
CHIRAYINKIL, SHARKARA VILLAGE - 695 304.**

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9. SHAMMY, PLAMTHOTTAM VEEDU,
CHIRAYINIL, SHARKARA VILLAGE-695 304.

10. SHAMA, PLAMTHOTTAM VEEDU,
CHIRAYINKIL, SHARKARA VILLAGE - 695 304.

11. OMANA, D/O VASUDEVAN,
NEDIYAVILA VEEDU,
KEEZHATTINGAL VILLAGE - 695 101.

* THE NAME OF RESPONDENT NO.1 STANDS CORRECTED AS 'JAYASIMHAN'
AS PER ORDER DATED 13-06-2013 IN O.P(C) NO.824/2012.

R2, R3, R4, R6, R8 & R10 BY ADVS. SRI.R.S.KALKURA.
SRI.M.S.KALESH.
SMT.A.V.PRIYA.
SRI.HARISH GOPINATH.

R11 BY ADVS. SRI.K.C.ELDHO.
SRI.JIJO THOMAS.
SRI.SURAJ.S.

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 23-02-2015, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S) EXHIBITS :

- EXT.P1 : TRUE COPY OF THE PLAINT IN O.S. O. 135 OF 2007 OF THE SUB COURT, ATTINGAL.
- EXT.P2 : TRUE COPY OF THE WRITTEN STATEMENT FILED BY DEFENDANTS 3,5,9,10 AND 11.
- EXT.P3 : TRUE COPY OF THE I.A. NO. 1942 OF 2011 IN O.S. NO. 135 OF 2007 OF THE SUB COURT, ATTINGAL.
- EXT.P4 : TRUE COPY OF THE ORDER DATED 14-2-2012 IN I.A. NO. 1942 OF 2011 IN O.S. NO. 135 OF 2007 OF THE SUB COURT ATTINGAL.
- EXT.P5 : TRUE COPY OF THE ORDER DATED 28-8-11.

RESPONDENTS' EXHIBITS : NIL.

//TRUE COPY//

P.A TO JUDGE

amk

A.HARIPRASAD, J.

O.P(C) No.824 of 2012

Dated this the 23rd day of February, 2015.

J U D G M E N T

Ext.P4 is under challenge. It is an order passed by the learned Sub Judge, Attingal in a review petition filed when the petitioner/plaintiff was directed to pay court fee in a suit for partition under Section 37(1) of the Kerala Court Fees and Suits valuation Act, 1959 (in short 'the Court Fees Act').

2. Heard the learned counsel for the petitioner and the learned counsel for the respondents.

3. Section 37(1) of the Court Fees Act will be applicable in a case where the plaintiff claiming partition has been excluded from the possession of property owned jointly or in common. In that event, he shall be liable to pay court fee computed on the market value of the plaintiff's share. I have been taken through the averments in Ext.P1 plaint. Learned counsel for the respondents submitted that in paragraph 8, it is clearly pleaded by the plaintiff that no share of profits has been given to her by the contesting defendants. The averments in paragraph 8 cannot be taken as a

ground to direct the plaintiff to pay court fee under Section 37(1) of the Court Fees Act. Learned counsel on both sides informed this Court that evidence in the case is over and the matter is reserved for judgment. In the meantime, the direction was issued by the trial court to pay court fee under Section 37(1) of the Court Fees Act. It is settled law that the question of court fee has to be decided on the averments in the plaint. There is no averment brought to my notice indicating that the petitioner/plaintiff has been excluded from possession of joint property. Therefore, I am of the view that the impugned order is not legally sustainable.

In the result, the original petition is allowed. The impugned order is set aside. The court below shall expedite the matter and dispose of the case within a period of one month from the date of production of this judgment.

All pending interlocutory applications will stand dismissed.

Sd/-

**A.HARIPRASAD,
JUDGE.**

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