

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

WEDNESDAY, THE 12TH DAY OF AUGUST 2015/21ST SRAVANA, 1937

OP(C).No. 3421 of 2012 (O)

OS 52/2012 OF SUB COURT, KANNUR.
.....

PETITIONER:

**T.T.GOURI, W/O LATE KUNHIRAMAN,
AGED 75 YEARS, PARAKANDY HOUSE,
P.O. KOTTALI, KANNUR.**

**BY ADVS.SRI.B.KRISHNAN
SRI.R.PARTHASARATHY
SRI.RAJESH V.NAIR**

RESPONDENT(S):

- 1. T.T.PANKAJAKSHI,
D/O LATE CHANDU, AGED 61 YEARS,
THEKKAN THOTTATHIL HOUSE,
P.O.KOTTIALI, KANNUR.**
- 2. KUNNATH KRISHNAN, S/O AMBADI,
AGED 63 YEARS, THIRUVATHIRA,
P.O. KOTTALI, KANNUR.**

**BY ADVS. SRI.GEORGE MATHEWS
SMT.CELINE JOSEPH**

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 12-08-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

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OP(C).No. 3421 of 2012 (O)

APPENDIX

PETITIONER(S) EXHIBITS:

- EXHIBIT P1: TRUE COPY OF THE PLAINT IN O.S.NO.140/2009 FILED BEFORE THE SUB COURT, THALASSERY.
- EXHIBIT P2: TRUE COPY OF THE WRITTEN STATEMENT FILED BY THE DEFENDANT NO.1 IN O.S.NO.140/2009 OF SUB COURT, THALASSERY.
- EXHIBIT P3: TRUE COPY OF THE WRITTEN STATEMENT FILED BY THE DEFENDANT NO.2 IN O.S.NO.140/2009 OF SUB COURT, THALASSERY.
- EXHIBIT P4: TRUE COPY OF THE PETITION FILED AS I.A.NO.213/2012 IN O.S.NO.52/2012 FILED BEFORE THE SUB COURT, KANNUR.
- EXHIBIT P5: TRUE COPY OF THE GAZETTE NOTIFICATION.
- EXHIBIT P6: TRUE COPY OF THE ORDER MADE IN O.S.NO.52/2012 DATED 28.2.2012 BY THE SUB COURT, KANNUR.
- EXHIBIT P7: TRUE COPY OF THE KERLA GAZETTE, NOTIFICATION DATED 14.12.2009.

RESPONDENTS' EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

mbr/

B. KEMAL PASHA, J.

.....
O.P.(C) No.3421 of 2012
.....

Dated this the 12th day of August, 2015

J U D G M E N T

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In the suit before the court below, the defendants have contended that the suit is grossly undervalued and proper court fee was not paid. It was contended that the market value of the property is not correctly shown.

2. Through Ext.P6 order, the court below has directed the plaintiff to take steps to show the correct valuation in the plaint by fixing a market value on the basis of Section 7(3A) of the Kerala Court Fees and Suits Valuation Act, 1959. It seems that the court below has relied on Section 7(3A) as a provision which runs in the following lines:-

“The market value of any property other than agricultural land and building falling under Sub sections (2) & (3) shall be value it will fetch at the time of the institution of the suit

and where the plaintiff estimate such market value it shall not be less than the minimum value of such land fixed by the District Collector U/S 28A of the Kerala Stamp Act, 1959.”

3. As rightly pointed out by the learned counsel for the petitioner, there is no such provision as reproduced by the court below in the Kerala Court Fees and Suits Valuation Act. Section '7(3a)' is also not there in the Kerala Court Fees and Suits Valuation Act. Section 7(3A) of the Kerala Court Fees and Suits Valuation Act reads:-

“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. It is based on a wrong provision which is not there in the Kerala Court Fees and Suits Valuation Act that the court below has passed Ext.P6 order. The entire exercise made by the court below in Ext.P6 order is illegal

and, therefore, the same has resulted in substantial miscarriage of justice. Ext.P6 order is, therefore, liable to be set aside.

In the result, this O.P.(C) is allowed and Ext.P6 order is set aside. The matter is remitted to the court below for fresh disposal in accordance with law, after giving an opportunity of being heard to both sides.

Sd/-
(B.KEMAL PASHA, JUDGE)

aks/12/08

// True Copy //

PA to Judge