

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

TUESDAY, THE 10TH DAY OF MARCH 2015/19TH PHALGUNA, 1936

OP(C).No. 529 of 2015 (O)

(Against the order dated 5.2.2015 in I.A.1276/2014 in O.S.129/2013 of
Sub Court, Kochi)

PETITIONER/DEFENDANT No.3:

P.A.FRANCIS, AGED 61 YEARS,
S/O.PUNNACKAL ANTONY, RESIDING AT PUNNACKAL HOUSE
KAPILA HUT, CC No.17/1836, SOUTH MOOLANKUZHY,
KOCHI - 682 008.

BY ADVS.SRI.NAVEEN THOMAS
SRI.KARTHIK S. ACHARYA
SRI.C.R.SANISH

RESPONDENTS/PLAINTIFFS 1 TO 3 AND DEFENDANTS 1, 2, 4& 5:

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1. PHILOMINA ANTONY, AGED 74 YEARS,
D/O.PUNNACKAL ANTONY, RESIDING AT CYRAIL HOUSE
CC.NO.14/883, PANDIKUDY, KOCHI - 682 002,
MATTANCHERRY, KOCHI TALUK.
 2. GRACY MATHEW, AGED 70 YEARS
D/O.PUNNACKAL ANTONY, RESIDING AT DOOR NO.19/160
KANJITHARA HOUSE, PUTHUVYPPU VILLAGE
KOCHI TALUK - 682 002.
 3. ROSY CLEATUS, AGED 62 YEARS
D/O.PUNNACKAL ANTONY
RESIDING AT VALIYAVEETIL HOUSE, C.C.NO.15/1112
NAZARETH, KOCHI - 682 002, RAMESWARAM VILLAGE
KOCHI TALUK.
 4. P.A.AUGUSTINE, AGED 76 YEARS
S/O.PUNNACKAL ANTONY, RESIDING AT PUNNACKAL HOUSE,
CC NO.14/625, NR FATHIMA CLINIC, PANDIKUDY
MATTANCHERRY VILLAGE, KOCHI TALUK - 682 002.

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5. MARY DASAMMA, AGED 65 YEARS
D/O. PUNNACKAL ANTONY, RESIDING AT ODAGTHAKAL HOUSE
CC NO.9/52 K, VELI, KOCHI - 682 001,
FORT KOCHI, KOCHI TALUK.
6. BABY SEBASTIAN,, AGED 56 YEARS,
D/O.PUNNACKAL ANTONY, RESIDING AT VADEKEVEETIL
CC NO.14/905 A, PANDIKUDY, MATTANCHERRY VILLAGE
KOCHI TALUK - 682 002.
7. P.A.YESUDAS, AGED 52 YEARS
S/O.PUNNACKAL ANTONY, RESIDING AT PUNNACKAL HOUSE
CC NO.16/618, POSTMAN CHACKO ROAD, THOPPUMPADY VILLAGE
KOCHI TALUK - 682 005.

THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON
10-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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APPENDIX

PETITIONER'S EXHIBITS :

EXT.P1: THE TRUE COPY OF THE PLAINT IN O.S.NO.129/2013.

EXT.P2: THE TRUE COPY OF THE WRITTEN STATEMENT IN O.S.NO.129/2013.

EX.P3: TRUE COPY OF WRITTEN STATEMENT TO THE COUNTER CLAIM.

EXT.P4: TRUE COPY OF I.A.NO.1276/2014 IN O.S.NO.129/2013 ON THE
FILES OF THE SUB COURT, KOCHI.

EXT.P5: TRUE COPY OF ORDER DATED 05/02/2015 ON I.A.NO.1276/2014 IN
O.S.NO.129/2013 ON THE FILES OF THE SUB COURT, KOCHI.

EXT. P6: COPY OF ORDER DTD.25.11.14 IN O.S.129/13 OF SUB COURT,
KOCHI.

RESPONDENTS' EXHIBITS: NIL.

// True Copy //

P.A. to Judge.

smp

P.BHAVADASAN, J.

Original Petition (Civil) No.529 OF 2015

Dated this the 10th day of March, 2015.

J U D G M E N T

Under challenge is Ext.P5 order whereby the court below came to the conclusion that the court fee paid by the plaintiffs is correct.

2. The suit was one for partition. The plaintiffs claimed to be in joint possession of the property and paid court fee under Section 37(2) of the Kerala Court Fees and Suits Valuation Act. The 3rd defendant, who is the petitioner before this Court, contested the matter and he pointed out that there is no averment in the plaint that the plaintiffs were in joint possession of the property along with the contesting defendant. The 3rd defendant had filed a counter claim raising adverse possession and limitation. The court below noticing that in the plaint there is a pleading to the effect that the property is in joint possession, found that court fee paid by the plaintiffs is proper and rejected the contentions based on want of proper valuation of payment of

court fee.

3. Learned counsel appearing for the petitioner-3rd defendant assailing the said order contended that there is no averment in the plaint that the plaintiffs are in joint possession of the property along with the contesting defendant. It is also pointed out that all that is stated in paragraph 3 of the plaint is that the 3rd defendant is in occupation of the building for and on behalf of all other co-owners. There is no averment that they are in joint possession of the property along with the 3rd defendant. In the absence of any such pleadings, it can be presumed that they are not in joint possession and court fee had to be paid under Section 37(1) of the Court Fees and Suits Valuation Act.

4. Though the argument may look attractive at the first blush, on a close scrutiny it can be found that it is without any basis. In paragraph 3 of the plaint, plaintiffs have mentioned as follows:

“3. Presently Defendant No.3 is in occupation of the building bearing C.C.No.15/92 situated on the plaint schedule property for and on behalf of all other co-owners”.

5. It needs to be noticed that in the plaint schedule property, a building is situated. The plaintiffs have averred that the building is occupied by the petitioner before this Court for and on behalf of all other co-owners. The claim of the 3rd defendant is one of adverse possession and limitation. It is well settled that for the purpose of examining whether proper court fee has been paid, one needs to go through the averments in the plaint. On going through the averment in plaint, it is felt that the court below is perfectly justified in coming to the conclusion that the court fee paid by the plaintiffs is just and proper. There is no ground to interfere with the impugned order.

This original petition is without merits and it is accordingly dismissed.

Sd/-

**P.BHAVADASAN
JUDGE**

smp