

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

TUESDAY, THE 14TH DAY OF JULY 2015/23RD ASHADHA, 1937

OP(C).No. 1235 of 2015 (O)

OS. NO. 961/2013 OF MUNSIF COURT, WADAKKANCHERY.

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PETITIONER(S):

**ARAVINDAKSHAN,
AGED 62 YEARS, THECHIKOTT VALIYAVEETIL,
S/O.THECHIKOTT VALIYAVEETIL NARAYANAN NAIR,
KUMBALNAGAD DESOM, WADAKKANCHERY VILLAGE,
TALAPPILLY TALUK, THRISSUR-680 590.**

**BY ADVS.SRI.C.HARIKUMAR,
SMT.C.B.ANUROOPA.**

RESPONDENT(S):

- 1. SUMATHY, AGED 53 YEARS,
THECHIKOTT VALIYAVEETIL HOUSE,
W/O.KALIYEDATH KUTTAPPAN,
D/O.THECHIKOTT VALIYAVEETIL NARAYANAN NAIR,
KUMBALNAGAD DESOM, KAJIRAKODE P.O.,
WADAKKANCHERY VILLAGE, THRISSUR- 680 590.**
- 2. KUTTAPPAN, AGED 53 YEARS,
S/O.LATE PARAMESWARAN NAIR,
THECHIKOTT VALIYAVEETIL HOUSE,
KUMBALNAGAD DESOM, WADAKKANCHERY VILLAGE,
KAJIRAKODE P.O., THRISSUR- 680 590.**

BY ADV. SMT.T.J.SEEMA.

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 14-07-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

rs.

OP(C).No. 1235 of 2015 (O)

APPENDIX

PETITIONER'S EXHIBITS:-

- P1 - THE TRUE COPY OF THE PLAINT IN OS NO.961/2013 ON THE FILE OF THE MUNSIFF COURT, WADAKKANCHERY DATED 28.09.2013.**
- P2 - THE TRUE COPY OF THE WRITTEN STATEMENT FILED BY THE DEFENDANTS IN OS NO. 961/2013 ON THE FILE OF THE MUNSIFF COURT, WADAKKANCHERY DATED 06.01.2014.**
- P3 - THE TRUE COPY OF THE ORDER DTD.12.12.2014 IN IA NO. 3254/2014 IN OS NO. 961/2013 BY THE MUNSIFF COURT, WADAKKANCHERY.**

RESPONDENT'S EXHIBITS:- **NIL.**

//TRUE COPY//

PA. TO JUDGE

rs.

B.KEMAL PASHA, J.

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O.P.(C).No.1235 of 2015

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Dated this the 14th day of July, 2015

J U D G M E N T

Alleging that the petitioner had permitted his sister to occupy the building belongs to him as he was abroad, the petitioner has sought for a decree of mandatory injunction through the suit before the court below for directing the respondents to hand over the key of the building to the petitioner. A decree of perpetual injunction is also sought for to the effect that the respondents should not commit any waste in the property or to cut and remove the trees therefrom. The respondents contended that they are entitled to possessory title in the property and building on account of adverse possession and limitation.

2. In such case, the relief has to be valued under Section 27(a) of the Kerala Court Fees and Suit Valuation

Act (hereinafter referred to 'the Act'). In such case, the fee shall be computed on one half of the market value of the property or on ₹500/-, whichever is higher. When the aforesaid defence was taken up by the respondents, the petitioner voluntarily filed I.A.No.3254 of 2014 under Order VI Rule 17 of the Code of Civil Procedure, 1908, for amending the valuation portion of the plaint for getting the suit valued under Section 27(a) of the Act. The court below has dismissed the I.A. through Exhibit P3 order by finding that the petitioner has resorted to a valuation by computing the market value under Section 7(3) of the Act instead of Section 7(2) of the Act.

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

3. It seems that the approach made by the court below is not correct. When a relief under Section 27(a) of the Act has been sought for in respect of an agricultural land, its market value has to be assessed under Section 7(2) of the

Act. When the subject matter of the suit is a building, its rental value as contained in the registers in the Local Authority has to be taken and ten times of such rental value and in other cases, the actual market value of the building as on the date of the plaint has to be taken as market value within the meaning of Section 7(3) of the Act. Here the subject matter of the suit is the building situated in 20 cents of property. According to the petitioner, there is no agricultural income from the property. What has been sought for is a mandatory injunction with regard to the building. The petitioner has sought for the relief of handing over the key of the building by the respondents to the plaintiff through a decree of mandatory injunction. In such case, the petitioner has rightly valued the plaint under Section 27(a) of the Act by computing the market value based on the principles contained in Section 7(3) of the Act. Matters being so, Exhibit P3 order is liable to be set aside. I.A.No.3254 of 2014 is only to be allowed.

In the result, this Original Petition (Civil) is allowed and Exhibit P3 order is set aside. I.A.No.3254 of 2014 stands allowed. The court below shall permit the petitioner to carry out the amendment.

Sd/-

B.KEMAL PASHA
JUDGE

DSV/15/7/15