

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

MONDAY, THE 9TH DAY OF MARCH 2015/18TH PHALGUNA, 1936

OP(C).No. 3702 of 2013 (o)

AGAINST THE ORDER IN OS 154/2008 of MUNSIF COURT,
KANJIRAPPALLY.

PETITIONER(S) :

CHANDRA SEKHARAN PILLAI,
S/O.KRISHNA PILLAI, VELANPARAMPIL, ERUMELY KARA,
ERUMELY SOUTH VILLAGE.

BY ADV. SRI.M.NARENDRA KUMAR

RESPONDENT(S) :

1. RAJAPPAN PILLAI, AGED 62 TEARS,
S/O.KRISHNA PILLAI, VELANPARAMPIL, ERUMELY KARA,
ERUMELY SOUTH VILLAGE, PIN-686509.
2. V K PARAMESWARAN PILLAI, AGED 74 YEARS, (DIED)
S/O.KRISHNA PILLAI, KANJICKAL HOUSE,
CHETTYKULANGARA KARA, KUMRAMANGALAM NORTH VILLAGE,
PIN-686 509.
3. GOURIKUTTYAMMA, AGED 69 YEARS,
D/O.KRISHNAN PILLAI, KOLLAMTHUDIYIL HOUSE,
NEELIPLAVU KARA, CHITTAR VILLAGE, PIN-686 509.

ADDL. R4 TO R8 IMPEADED

4. SARADAMMA, W/O. LATE PARAMESWARA PILLAI,
AGED 60, KANJICKAL (PRATHIBHA),
KANNAMANGALAM P.O.,
CHETTIKULANGARA, MAVELIKKARA.
5. KRISHNA KUMAR. P.O, AGED 45,
S/O. PARAMESWARAN PILLAI,
KANJICKAL (PRATHIBHA),
KANNAMANGALAM P.O.,
CHETTIKULANGARA, MAVELIKKARA.

6. JAYACHANDRAN, AGED 40,
S/O. PARAMESWARAN PILLAI,
KANJICKAL (PRATHIBHA),
KANNAMANGALAM P.O.,
CHETTIKULANGARA, MAVELIKKARA.

7. PREETHI, AGED 38,
D/O. PARAMESWARAN PILLAI,
KANJICKAL (PRATHIBHA),
KANNAMANGALAM P.O.,
CHETTIKULANGARA, MAVELIKKARA.

8. PRATHIBHA, AGED 34,
D/O. PARAMESWARAN PILLAI,
KANJICKAL (PRATHIBHA),
KANNAMANGALAM P.O.,
CHETTIKULANGARA, MAVELIKKARA.

ADDL. R4 TO R8 ARE IMPEADED AS PER ORDER DT.
10.7.2014 IN I.A. 8942/2014.

R1, R3 & ADDL.R4 TO R8 BY ADV.LIJI.J.VADAKEDOM.

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON
09-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

OP(C).No. 3702 of 2013 (o)

APPENDIX

PETITIONER(S) ' EXHIBITS

P1:-TRUE COPY OF THE WRITTEN STATEMENT IN OS NO 154/2008
IN THE MUNSIFFS COURT, KANJRAPPALLY

P2:-TRUE COPY OF THE 'SAMMATHAPATHRAM"DTD 28/2/2007

P3:-TRUE COPY OF THE ORDER DTD 11/10/2013 IN OS NO
154/2008 IN THE COURT OF MUNSIFF , KANJIRAPPALLY

RESPONDENT(S) ' EXHIBITS

P. BHAVADASAN, J.

O.P.(C). No. 3702 of 2013

Dated this the 9th day of March, 2015.

JUDGMENT

The short question that arises for consideration in this Original Petition under Article 227 of the Constitution of India is whether direction of the court below to pay stamp duty under Article 33 clause (viii) of the Stamp Act on Ext.P2 document is justified or not.

2. Admittedly the petitioner was occupying a premises which belonged to the first respondent herein and eviction was sought for. Petitioner relied on Ext.P2 for possession. It is disputed by the respondents. The court below held that it is a lease in the proper sense of the term and directed to pay stamp duty under Article 33 clause (viii) of the Stamp Act. It is the said order that is assailed before this Court.

3. Learned counsel appearing for the petitioner relied on the decisions reported in **Manohar Kammath v. Ram Mohan Kammath** (1991 (2) K.L.T. 714) and **Kochunarayanan v. Aravindakshan** (1974 K.L.T. 301) wherein this Court had occasion to consider the question as to whether it is possible to import the definition of some other statute for the purpose of understanding a document under the Stamp Act. Both the decisions held that for the purpose of considering whether stamp duty is payable or not, the definition in the Act alone should be looked into and the court shall not be influenced by any other definition in any other Act.

4. Learned counsel for the petitioner drew the attention of this Court to Section 2(I) of Stamp Act which defines 'lease' as follows:

“2(I) “lease” means a lease of immovable property, and includes also

- (i) Marayapattom;
- (ii) Kanapattom;

(iii) an agreement or other undertaking in writing not being a counterpart of a lease, to cultivate, or pay or deliver rent for immovable property;

(iv) an agreement or other undertaking in writing, executed by the renters of abkari or opium farms;

(v) any instrument by which tolls of any description are let;

(vi) any writing on an application for a lease intended to signify that the application is granted; and

(vii) a patta."

Learned counsel contended that the document in question falls under Section 2(l)(iii) of the Act. It was then contended that it has not been signed by the lessee, so it does not fall within the ambit of this provision. If that be so, the direction to pay stamp duty is not proper.

5. Learned counsel for the respondents drew the attention of this Court to the decision reported in **State of Uttarakhand v. Harpal Singh Rawat** ((2011) 4 SCC 575) and sought to import a definition contained in the Transfer of Property Act.

6. The controversy can be settled without much debate. Section 2(l) of the Stamp Act defines lease which was extracted above. It means lease of immovable property. Immovable property is defined in the General Clauses Act which reads as follows:

“3(26) “immovable property” shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth.”

It takes in the things attached to earth, in which case the document on hand squarely falls within the term lease as defined under Section 2(l) of the Stamp Act and stamp duty directed to be paid is just and proper.

This Original Petition is without merits and it is dismissed.

sb.

P. BHAVADASAN,
JUDGE