

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

FRIDAY, THE 17TH DAY OF JULY 2015/26TH ASHADHA, 1937

OP(C).No. 1716 of 2015 (O)

PETITIONER(S):

**MOIDEEN KOYA, AGED 45 YEARS,
S/O.MUHAMMED, KULANGOTTU HOUSE, CHERUKAVU AMSOM,
VENNAYUR DESOM, ERANAD TALUK, MALAPPURAM DISTRICT.**

**BY ADVS.SRI.JOBY JACOB PULICKEKUDY
SRI.ANIL GEORGE**

RESPONDENT(S):

- 1. PARAKULAMBIL KADEEJAKUTTY, AGED ABOUT 73 YEARS,
D/O.MAMMED KOYA, CHELEMPRA AMSOM DESOM, ERANAD TALUK,
MALAPPURAM DISTRICT.**
- 2. MUHAMMED KUTTY, AGED 75 YEARS,
S/O.LATE BICHUMMA, PARAKULAMBIL HOUSE,
THENJIPALAM DESOM, THIRURANGADI TALUK,
MALAPPURAM DISTRICT.**
- 3. PATHEYI, AGED 70 YEARS,
D/O.KOYATTI, KODAL AMSOM DESOM, KOZHIKODE TALUK,
KOZHIKODE DISTRICT.**
- 4. KADEEJA, AGED 66 YEARS,
D/O.KOYATTI, MUNDOLI HOUSE, NALLALAM AMSOM DESOM,
KOZHIKODE TALUK, KOZHIKODE DISTRICT.**
- 5. THITHIKUTTY, AGED 73 YEARS,
D/O.KOYATTI, VALLIKUNNAM AMSOM DESOM,
THIRURANGADI TALUK, MALAPPURAM DISTRICT.**
- 6. P.KOYA, AGED 62 YEARS,
D/O.KOYATTI, PATTAKKARA HOUSE, THENJIPALAM AMSOM DESOM,
THIRURANGADI TALUK, MALAPPURAM DISTRICT.**
- 7. RASHEED, AGED 48 YEARS,
S/O.MUHAMMED, PARAKULAMBIL HOUSE, CHERUKAVU AMSOM,
VENNAMOOR DESOM, ERANAD TALUK, MALAPPURAM DISTRICT.**

Msv/

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8. MOIDEEN KOYA, AGED 66 YEARS,
S/O.KOYAKUTTY, CHELEMPRA AMSOM, PULLIPARAMBU DESOM,
THIRURANGADI TALUK, MALAPPURAM DISTRICT.
9. IMPICHI KOYA, AGED 63 YEARS
S/O.KOYAKUTTY, CHELEMPRA AMSOM DESOM
THIRURANGADI TALUK, MALAPPURAM DISTRICT.
10. PATHEYI, AGED 70 YEARS
D/O.KOYAKUTTY, CHELEMPRA AMSOM, PULLIPARAMBU DESOM
THIRURANGADI TALUK, MALAPPURAM DISTRICT.
11. KADEEJA, AGED 63 YEARS
D/O.KOYAKUTTY, CHELEMPRA AMSOM, PULLIPARAMBU DESOM
THIRURANGADI TALUK, MALAPPURAM DISTRICT.
12. AMEENA, AGED 61 YEARS
CHELEMPRA AMSOM DESOM, THIRURANGADI TALUK
MALAPPURAM DISTRICT.
13. SAFIYA, AGED 54 YEARS
S/O.KOYAKUTTY, CHELEMPRA AMSOM DESOM
THIRURANGADI TALUK, MALAPPURAM DISTRICT.
14. IMPICHI KOYA, AGED 68 YEARS
S/O.BEERANKUTTY, CHERUKAVU AMSOM
KANUMPOTTIKAVU DESOM, ERANAD TALUK
MALAPPURAM DISTRICT.
15. AHAMMEDKUTTY, AGED 65 YEARS
S/O.BEERANKUTTY, AZHINJIL AMSOM DESOM, ERANAD TALUK
MALAPPURAM DISTRICT.
16. HASSAN, AGED 54 YEARS
S/O.KASMI, PULLIPARAMBU AMSOM, CHELEMPRA DESOM
THIRURANGADI TALUK, MALAPPURAM DISTRICT.

THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 17-07-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

msv/

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APPENDIX

PETITIONER(S)' EXHIBITS

**EXT P1- TRUE PHOTOCOPY OF PLAINT ALONG WITH PROCEEDINGS RETURNING
THE PLAINT.**

**EXT P2- TRUE PHOTOCOPY OF DRAFT ORDER IN THE UNNUMBERED SUIT
DATED 06/07/2015 PASSED BY THE SUBORDINATE JUDGE'S COURT, TIRUR.**

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

[CR]

B. KEMAL PASHA, J.

.....
O.P.(C) No. 1716 of 2015

.....
Dated this the 17th day of July, 2015

J U D G M E N T

Ext.P2 order passed by the Subordinate Judge's Court, Tirur in an unnumbered suit, by which the plaint was ordered to be returned for non-payment of court fee, is under challenge.

2. The suit was filed on 22.06.2015 with court fee stamp for ₹300 purchased on 05.03.2011. The court below has taken the view that stamps purchased prior to six months from the date of use could not be made use of for the payment of court fee. The court below has relied on

Rule 12(g) and Rule 13(1) of the Kerala Court Fees and Suits Valuation(Board of Revenue) Rules, 1960 and also Section 52 of the Kerala Stamp Act,1959 for taking such a view. It seems that the court below has misread those provisions. Rule 12(g) of the aforesaid Rules says:

“When stamps have been purchased with a bona fide intention to use them and they have not been spoiled or rendered unfit or useless for the purpose intended, but there is no immediate use for them.”

3. Rule 13(1) of the aforesaid Rules says:

“Used, damaged or spoiled Court-fee stamps may be renewed on application made within six months after the stamp has been used, damaged or spoiled, and on the delivery of the same:-

(a) by Tahsildar when the value of the stamp does not exceed rupees five hundred.

(b) by the Revenue Divisional

Officer when the value of the stamp exceeds rupees five hundred but does not exceed rupees one thousand.

(c) by the Collector irrespective of the value of the stamps whether the stamps were purchased in his District or elsewhere.”

4. The said rules do not say that stamps or stamp papers of more than six months old cannot be made use of. Those provisions are intended for refund or for renewal and not for any other purpose.

5. Section 52 of the Kerala Stamp Act, 1959 is *pari materia to* Section 54 of the Indian Stamp Act, 1899. The said provisions in the Indian Stamp Act as well as in the Kerala Stamp Act, 1959 are intended for the refund of value of stamp papers which are not made use of. Section 52(c) of the Kerala Stamp Act, 1959 says:

“That they were so purchased within the period of six months next preceding the date on which they were so delivered.”

6. Section 52(c) of the Kerala Stamp Act says that such a person is entitled to refund only if the said stamps were purchased within the period of six months next preceding the date on which they were so delivered. Apart from that, either the Indian Stamp Act, 1899 or the Kerala Stamp Act, 1959 do not say that such stamp papers cannot be made use of.

7. The learned counsel for the petitioner has relied on the decision in ***Thiruvengadam Pillai v. Navaneethammal and another*[(2008) 4 SCC 530]** wherein it was clearly held that there is no impediment for a stamp paper purchased more than six months prior to the proposed date of execution, being used for the execution of a document and that the Indian Stamp Act, 1899 nowhere prescribes any expiry date for the use of a stamp paper. The condition prescribed in Section 52(c) of the Kerala Stamp Act, clearly relates to refund of the amount of the stamp and nothing more. The decision in **Thiruvengadam**

Pillai(*supra*) was rendered after discussing Section 54 of the Indian Stamp Act. Section 52 of Kerala Stamp Act is *pari materia* to Section 54 of the Indian Stamp Act, 1899. Matters being so, the return of the plaint by the court below has resulted in substantial miscarriage of justice. The party has been unnecessarily driven to this Court to have recourse to Article 227 of the Constitution of India.

In the result, this Original Petition is allowed and the court below is directed to receive the plaint, number it, if it is otherwise valid, and proceed with the suit, in accordance with law.

Sd/- B.KEMAL PASHA, JUDGE

ul/-

[True copy]

P.S. to Judge