

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

TUESDAY, THE 27TH DAY OF OCTOBER 2015/5TH KARTHIKA, 1937

OP(C).No. 2576 of 2015 (O)

E.P. 261/2015 IN ARC 4425/2011 of MUNSIFF COURT, PARAPPANANGADI

PETITIONER/3RD RESPONDENT/JUDGEMENT DEBTOR :

**MARAKKAR, AGED 49 YEARS,
S/O.KUNJUMOIDEEN, KOONARI HOUSE, POST THENNALA,
POOKKIPARAMBU, TIRURANGADI TALUK, MALAPPURAMDISTRICT.**

**BY ADVS.SRI.C.M.MOHAMMED IQUABAL
SMT.ANJALI G.KRISHNAN**

RESPONDENTS/PETITIONER AND OTHER RESPONDENTS :

- 1. THE SECRETARY
THENNALA SERVICE CO-OPERATIVE BANK LIMITED
POST VALAKULAM, MALAPPURAM DISTRICT, PIN - 676 508.**
- 2. UBAID
S/O.MOHAMMED, KOONARI HOUSE, POST THENNALA
POOKKIPARAMBU, TIRURANGADI TALUK, MALAPPURAMDISTRICT
PIN - 676 508.**
- 3. BASHEER
S/O.HAMZA, THAIVALAPPIL HOUSE, POOKKIPARAMBU
POST VALAKULAM, MALAPPURAM DISTRICT, PIN - 676 508.**

**THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 27-10-2015,
ALONG WITH OPC 2577/2015 & OPC 2578/2015THE COURT ON THE
SAME DAY DELIVERED THE FOLLOWING:**

bp

OP(C).No. 2576 of 2015 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

**EXT.P-1: THE TRUE COPY OF E.P 261/2015 IN ARC 4425/2011 OF THE MUNSIF
 COURT, PARAPPANANGADI DATED 23.3.2015.**

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

K. ABRAHAM MATHEW, J.

O.P.(C)No.2576 of 2015

Dated this the 13th day of November, 2015

J U D G M E N T

Petitioners are the plaintiffs in OS.168 of 2011 on the file of Sub Judge, Kochi. There are two prayers in the plaint. One is partition of the properties and the other is declaration that a settlement deed is not binding on the petitioners. The dispute is with regard to the court fees payable for the relief of declaration. In the plaint the Petitioners have stated that it is a consequential relief and they need not pay court fees. The learned Sub Judge rejected their contention and directed them to pay court fees under Section 25 (d) (i) of the Kerala Court Fees and Suits Valuation Act. This is challenged.

2. Heard.

3. The learned counsel for the petitioners relies on ***Sankaran Vs.Velukutty (1986 KLT 794)***. That was also a case in which reliefs of partition and declaration that a document was not binding on the plaintiffs were prayed for. The learned Judge held that the plaintiff need not pay court fees for the relief of declaration as his prayer was

only to declare that the document was not binding on him. The facts are almost identical. So I am inclined to follow the decision in Sankaran's case though I cannot accept the plea that the prayer for declaration is a consequential one.

4. The defendants have raised a contention that the petitioners are not in joint possession of the properties sought to be partitioned. It is a matter to be looked into by the trial court. If the facts of the case indicate that the petitioners have no joint possession they have to pay court fees under Section 37(1) of the Act.

In the result this O.P is allowed in part. The impugned order is set aside. The petitioners need not pay court fees for the relief of declaration. The trial court shall decide whether for the relief of partition the court fees is payable under Section 37(1) or 37(2) of the Kerala Court Fees and Suits Valuation Act.

sd/-

K. ABRAHAM MATHEW
JUDGE

R.AV

//True Copy//

PA to Judge