

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

THURSDAY, THE 26TH DAY OF FEBRUARY 2015/7TH PHALGUNA, 1936

OP(C).No. 2503 of 2014 (O)

OS. NO.624/2011 OF SUB COURT, THIRUVANANTHAPURAM.

PETITIONER/1ST PLAINTIFF:

LALITHAMMA,
W/O. LATE SUBRAMANIA IYER, AGED 64 YEARS,
RESIDING AT T.C.37/91, PAZHAVANGADI GRAMAM,
VANCHIYOOR VILLAGE, FORT P.O.,
THIRUVANANTHAPURAM.

BY ADV. SRI.G.S.REGHUNATH.

RESPONDENTS/DEFENDANTS:

-
1. RENJITH, AGED 27 YEARS,
S/O LATE SUBRAMANIA IYER, RESIDING AT T.C.37/91,
PAZHAVANGADI GRAMAM, VANCHIYOOR VILLAGE,
FORT P.O., THIRUVANANTHAPURAM-695 012.
 2. T.S. DASS, AGED 45 YEARS, S/O. SUBRAMANIAM,
RESIDING AT T.C.41/2294, VIDYADHIRAJA LANE,
MANACAUD P.O., THIRUVANANTHAPURAM-695 026.

R2 BY ADVS. SRI.L.MOHANAN,
SMT.LIGEY ANTONY.

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 26-02-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rs.

OP(C).No. 2503 of 2014 (O)

APPENDIX

PETITIONER'S EXHIBITS:-

- EXHIBIT P1: TRUE COPY OF THE PLAINT IN OS NO.624/2011 ON THE FILE OF THE HON'BLE SUB COURT, THIRUVANANTHAPURAM DATED 30.05.2011.
- EXHIBIT P2: TRUE COPY OF THE WRITTEN STATEMENT IN OS NO.624/2011 DATED 17.10.2011.
- EXHIBIT P3: TRUE COPY OF THE JUDGMENT DATED 18.08.2014 IN OS NO.624/2011 OF THE HON'BLE SUB COURT, THIRUVANANTHAPURAM.
- EXHIBIT P4: TRUE COPY OF THE REVIEW PETITION I.A.NO.3636/2014 FILED BEFORE THE PRINCIPAL SUB COURT, THIRUVANANTHAPURAM DATED 30.09.2014.
- EXHIBIT P5: TRUE COPY OF THE ORDER DATED 16.10.2014 IN IA NO.3636/2014 IN O.S.NO.624/2011 OF THE PRINCIPAL SUB COURT, THIRUVANANTHAPURAM DATED 30.09.2014.

RESPONDENT'S EXHIBITS:-

NIL.

//TRUE COPY//

P.S. TO JUDGE

rs.

P. BHAVADASAN, J.

O.P.(C). No. 2503 of 2014

Dated this the 26th day of February, 2015.

JUDGMENT

The short point that arises for consideration in this Original Petition under Article 227 of the Constitution of India is whether the court below was justified in treating the suit which is essentially one for partition as a declaratory suit and directing the plaintiffs to pay court fee under Section 25 of the Court Fees and Suits Valuation Act.

2. It is not in dispute that the property originally belonged to one Subramania Iyer, who is no more. His wife and children are the plaintiffs and the first defendant in the suit. The first defendant transferred his share in the property to the second defendant and that resulted in the suit.

3. The court below going by the prayer made in the plaint formed the opinion that it is a declaratory suit and

directed payment of court fee under Section 25 of the Court Fees and Suits Valuation Act.

4. The plaintiffs, aggrieved by the said order, filed a review petition as Ext.P4 which was dismissed by Ext.P5 order.

5. Shri. G.S.Raghunath, learned counsel appearing for the petitioner contended that, may be that the prayer in the suit is ill-drafted. But essentially the suit is one for partition whereby the parties claim their separate shares. According to the learned counsel, may be that there is an attempt to combine the preliminary and final decree but that by itself is not a ground to hold that the suit is one for a declaratory relief as nobody has a case that the plaintiffs are out of possession and they need declaration on that behalf. According to the learned counsel, the court below was therefore not justified in directing the plaintiffs to pay court fee under Section 25 of the Court Fees and Suits Valuation Act merely on the basis of the prayer in the suit

seeking declaratory relief with regard to the share of the first defendant in the plaint schedule property.

6. Shri. L. Mohanan, learned counsel appearing for the second respondent pointed out that the attempt is to bring the suit within the Partition Act and also that repeatedly in the plaint it is claimed that the property cannot be divided by metes and bounds and ultimately a declaration is sought for. Viewed from any angle, the court below was justified in directing to pay court fee under Section 25 of the Court Fees and Suits Valuation Act.

7. First of all the suit cannot fall under any of the provisions under the Partition Act. It is not in dispute that the property is only one cent with a building thereon. Of course, the first prayer in the suit reads as follows:

“(A) A decree may be passed declaring 1/4th indivisible share of the plaint schedule property and building thereon to all the legal heirs of the deceased Subramania Iyer viz. The plaintiffs (1) to (3) and the 1st defendant.”

But that prayer has to be read in the light of the other averments in the plaint and the rights which the parties seek to agitate.

8. It is true that in the plaint it is repeatedly said that the property involved cannot be divided by metes and bounds and it is only possible to allot it to one sharer who has to purchase the share of other sharers and pay the value of the same proportionately to the other sharers. However, that could at best be treated only as an attempt to combine the preliminary decree and final decree and a composite decree to be passed at the first instance itself. Even though the relief extracted above contains a declaratory relief, on going through the plaint it is seen that what is sought for is separate shares to the persons concerned. Nobody has got a case that the plaintiffs are out of possession.

In the result, this Original Petition is allowed and the impugned orders are set aside and it is held that the

plaintiffs are entitled to pay court fee under Section 37(2) of the Court Fees and Suits Valuation Act.

P. BHAVADASAN,
JUDGE

sb.