

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN
&
THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN**

THURSDAY, THE 19TH DAY OF MARCH 2015/28TH PHALGUNA, 1936

RFA.No. 532 of 2014

O.S.NO.53/2010 OF SUB COURT, KOCHI

ADDRESS OF THE APPELLANT(S)/1ST DEFENDANT :

**JACOB MANUAL @ MANAPPAN, AGED 65 YEARS,
S/O.JACOB, KADAVIPARAMBIL, WARD NO.3,
(NORTH END), NEAR PETROL PUMP, AROOR P.O.
ALAPPUZHA DISTRICT.**

**BY ADVS.SRI.SHIJU VARGHEESE
SRI.C.R.VINOD KUMAR**

ADDRESS OF THE RESPONDENT(S)/PLAINTIFFS/DEFENDANTS 2 AND 3 :

- 1. SANTHOSH V.PRABHU, AGED 53 YEARS,
S/O.VISWANATHA PRABHU, BUSINESS,
RESIDING AT CC NO.8/1692, KILIKAR ROAD, COCHIN-682 002,
MATTANCHERRY VILLAGE, KOCHI TALUK.**
- 2. P.JYOTHI, AGED 54 YEARS,
S/O.P.K.PALANISWAMY, BUSINESS,
RESIDING AT CC NO.48/1235 A, ELAMAKKARA, COCHIN-682 026,
EDAPPALLY SOUTH VILLAGE, KANAYANNUR TALUK.**
- 3. MARY FATHIMA SOPHY, AGED 64 YEARS,
W/O.ROBERT FEDALIS, VALLANAT, ELAMAKKARA,
COCHIN-682 026, EDAPALLY SOUTH VILLAGE,
KANAYANNUR TALUK.**
- 4. MERCY GRACY, AGED 60 YEARS
W/O.JOSEPH, PASHNIPARAMBIL, KORAMPADAM,
KADAMAKUDY, KADAMAKUDY VILLAGE, KANAYANNUR TALUK-682 027.**

**R1 & R2 BY ADVS.SRI.S.B.PREMACHANDRA PRABHU(CAVEATOR)
SRI.K.B.RAJESH**

R3 BY ADV. SRI.VINUCHAND

**THIS REGULAR FIRST APPEAL HAVING BEEN FINALLY HEARD
ON 19-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

Msd.

P.N.RAVINDRAN & ANIL K.NARENDRA, JJ.

R.F.A.No.532 OF 2014

DATED THIS THE 19th DAY OF MARCH, 2015

JUDGMENT

ANIL K.NARENDRA , J.

The appellant is the first defendant in O.S.No.53 of 2010 on the file of the Court of the Subordinate Judge of Kochi. The said suit was filed by respondents 1 and 2 herein seeking specific performance of Ext.A1 sale agreement dated 28.2.2007 executed between the appellant and the first respondent. By judgment dated 20.2.2014, the court below decreed the suit for specific performance of Ext.A1 agreement and the appellant was directed to execute a sale deed in favour of respondents 1 and 2 and put them in possession of the plaint schedule property after receiving the balance sale consideration of ₹5,78,000/- within a period of two months from the date of judgment. It was held that if the appellant fails to execute the sale deed, respondents 1 and 2 would be at liberty to deposit the balance sale consideration within a further period of one month and to get the sale deed executed through Court at the expense of the appellant. It was also held that

respondents 1 and 2 are entitled to get the entire costs of the suit from the appellant. It is aggrieved by the judgment and decree of the court below, the appellant is before us in this appeal. By order dated 18.2.2015, as agreed to by both sides, the parties were referred to mediation and they were directed to appear before the Nodal Officer, Ernakulam Mediation Centre on that day itself and the case was ordered to be posted before the Bench along with the report of the Mediator on 3.3.2015.

2. Now the parties have settled the dispute in mediation and the terms and conditions of the settlement, reduced to writing in the form of a Terms of Compromise dated 27.2.2015, verified and signed by all the parties and attested by their respective counsel, is forwarded to this Court along with the report of the Mediator dated 2.3.2015, for recording such compromise and to dispose of this appeal in terms of the said compromise.

3. Going by the terms of the compromise, the appellant/first defendant has agreed to transfer the plaint schedule property to respondents 1 and 2/plaintiffs by executing

a conveyance deed prepared by them, on receipt of an additional amount of ₹35,30,000/-, which they have agreed to pay on or before 10.4.2015. The appellant/first defendant is at liberty to withdraw the amount of ₹5,78,000/- deposited before the court below by respondents 1 and 2/the plaintiffs immediately on the passing of a decree in terms of the compromise. The appellant/first defendant has to execute a sale deed regarding the plaint schedule property in O.S.No.53 of 2010 in favour of respondents 1 and 2/the plaintiffs and/or their nominees immediately on receipt of the above mentioned additional amount and hand over the original title deeds of the property at the time of execution of the sale deed. In case the appellant/first defendant refuses to accept the amount aforementioned and execute the sale deed, respondents 1 and 2/the plaintiffs can deposit the said amount before the Court of the Subordinate Judge of Kochi in O.S.No.53 of 2010 and get the sale deed executed through the court at the cost of the appellant/first defendant.

4. Clause (7) of the terms of the compromise dated

27.2.2015, which deals with the refund of the court fee paid on the plaint, reads thus:

“The parties agree that in order to record this settlement before the court below so as to enable the respondents/plaintiffs to get refund of the entire court fees paid in the suit, for which the appellant has no objection, this Honourable Court may be pleased to set aside the judgment and decree passed by the court below and remand the suit to the trial court with appropriate directions.”

Going by the said clause, the parties have agreed that the settlement may be recorded before the court below, so as to enable respondents 1 and 2/plaintiffs to get refund of the entire court fee paid in the suit, for which the appellant has no objection. The parties have also agreed that the judgment and decree passed by the trial court may be set aside and the suit be remanded to the trial court with appropriate directions.

5. Section 69A of the Kerala Court Fees and Suits Valuation Act, 1959 inserted by the Kerala Finance Act, 2013, which came into force with effect from 1.4.2013, states that where a suit, appeal or other proceedings before any court is settled by recourse to section 89 of the Code of Civil Procedure,

1908, the whole court fee paid on the plaint/memorandum of appeal or other proceedings, except in interlocutory matters, shall be ordered by the court to be refunded to the parties concerned by whom the court fee was paid. Therefore, going by section 69A of the Act, where a suit or appeal is settled by recourse to section 89 of the Code, the whole court fee paid on the plaint/memorandum of appeal or other proceedings, as the case may be, shall be ordered by the court to be refunded to the parties concerned.

6. It is pertinent to note that section 67 of the Act deals with refund of court fee in cases of remand and going by sub-section (1), where a plaint or memorandum of appeal which has been rejected by the lower court is ordered to be received, or where a suit is remanded in appeal for a fresh decision by the lower court, the court making the order or remanding the appeal may direct the refund to the appellant of the full amount of court fee paid on the memorandum of appeal; and, if the remand is in second appeal, also on the memorandum of appeal in the first appellate court. Sub-section (2) states that, where an appeal is

remanded in second appeal for a fresh decision by the lower appellate court, the High Court remanding the appeal may direct the refund to the appellant of the full amount of fee paid on the memorandum of second appeal if the remand is in second appeal. But, the first proviso to section 67 makes it clear that no refund shall be ordered if the remand was caused by the fault of the party who would otherwise be entitled to a refund. Therefore, the refund of court fee on remand is subject to the condition that such order of remand was not caused by the fault of the party who would otherwise be entitled to a refund.

7. Going by section 69A of the Act, refund of the whole court fee paid on the plaint/memorandum of appeal or other proceedings, except interlocutory matters, is permissible where the suit, appeal or other proceedings is settled by recourse to section 89 of the Code. Therefore, going by the frame work of section 69A, if an appeal pending before this Court is settled by recourse to section 89 of the Code, the whole court fee paid on the memorandum of appeal alone can be ordered to be refunded to the party concerned by whom the court fee was paid. In such

a case, this Court cannot order refund of the whole court fee paid on the plaint merely for the reason that, the terms of compromise entered into between the parties contain an enabling clause for ordering such a refund.

8. Here the suit was decreed for specific performance by which the appellant/first defendant is directed to execute the sale deed in favour of respondents 1 and 2/plaintiffs and put them in possession of the plaint schedule property after receiving the balance sale consideration of ₹5,78,000/-. Now by the compromise entered into between the parties, the appellant/first defendant has agreed to transfer the plaint schedule property to respondents 1 and 2/plaintiffs and/or their nominee on receipt of an additional sale consideration of ₹35,30,000/-. Only in cases where the terms of compromise necessitate remand of the suit to the lower court for fresh decision by that court, this Court would be justified in ordering a remand of the suit to the lower court and on such suit being compromised before the lower court, the whole court fee paid on the plaint shall be ordered by that court to be refunded to the parties concerned, by whom the court fee

was paid.

9. This Court while recording a settlement of dispute in terms of section 89 of the Code cannot remand the suit to the lower court for the sole purpose of enabling the parties concerned to claim refund of the court fee paid on the plaint. Therefore, the court fee paid on the plaint in O.S.No.53 of 2010 on the file of the Court of the Subordinate Judge of Kochi cannot be ordered to be refunded to respondents 1 and 2/plaintiffs in terms of clause (7) of the terms of compromise dated 27.2.2015.

10. In view of the compromise entered into between the parties, in modification of the decree passed by the Court of the Subordinate Judge of Kochi in O.S.No.53 of 2010, we direct the appellant/first defendant to execute a sale deed in respect of the plaint schedule property in favour of respondents 1 and 2/plaintiffs and/or their nominees after receiving an additional sale consideration of ₹35,30,000/- over and above the balance sale consideration of ₹5,78,000/-. The appellant/first defendant will be at liberty to withdraw the amount of ₹5,78,000/- deposited before the court below by respondents 1 and

2/plaintiffs, immediately on the passing of this judgment. In case the appellant/first defendant refuses to receive the additional consideration as above mentioned and execute the sale deed, it will be open to respondents 1 and 2/plaintiffs to deposit the said amount in the Court of the Subordinate Judge of Kochi to the credit of O.S.No.53 of 2010 and get the sale deed executed through the court, at the cost of the appellant/first defendant. A copy of the terms of compromise dated 27.2.2015 entered into between the parties shall be appended to this judgment.

The Registry has reported that the appellant/first defendant has not paid the balance court fee. In view of the settlement of the disputes through mediation, it is ordered that, the court fee paid on the memorandum of appeal towards 1/3rd court fee shall be refunded to the appellant.

Sd/-
P.N.RAVINDRAN, JUDGE

Sd/-
ANIL K.NARENDRA, JUDGE

dsn