

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. 813 of 2014 (B)

OS 52/2010 of PRINCIPAL SUB COURT, KOCHI, DATED 20-02-2014

APPELLANT(S)/DEFENDANTS:

- 1. MARY FATHIMA SOPHY, AGED 63 YEARS
W/O.ROBERT FEDALIS, VALLANAT, ELAMAKKARA
COCHIN 682026, EDAPPALLY SOUTH VILLAGE
KANAYANNUR TALUK.**
- 2. ANTONY SACHIN, AGED 30 YEARS
S/O.ROBERT FEDALIS, VALLANAT, ELAMAKKARA
COCHIN 682026, EDAPPALLY SOUTH VILLAGE
KANAYANNUR TALUK.**

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

RESPONDENT(S)/PLAINTIFFS:

- 1. SANTHOSH V.PRABHU, AGED 52 YEARS
S/O.VISWANATHA PRABHU, BUSINESS
RESIDING AT CC NO.8/1692, KILIKAR ROAD, COCHIN-682 002
MATTANCHERRY VILLAGE, KOCHI TALUK-682002.**
- 2. P.JYOTHI, S/O.P.K. PALANISWAMY, AGED 50 YEARS,
BUSINESS, RESIDING AT CC NO.48/1235 A, ELAMAKKARA
COCHIN-682 026, EDAPPALLY SOUTH VILLAGE
KANAYANNUR TALUK-682026.**

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

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

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

R.F.A.No.813 OF 2014

DATED THIS THE 19th DAY OF MARCH, 2015

JUDGMENT

ANIL K.NARENDRA, J.

The appellants are the defendants in O.S.No.52 of 2010 on the file of the Court of the Subordinate Judge of Kochi. The said suit was filed by respondents herein seeking specific performance of Ext.A1 sale agreement dated 28.2.2007 executed between the appellants and the respondents. By judgment dated 20.2.2014, the court below decreed the suit for specific performance of Ext.A1 agreement and the appellants were directed to execute a sale deed in favour of respondents and put them in possession of the plaint schedule property after receiving the balance sale consideration of ₹3,92,000/- within a period of two months from the date of judgment. It was held that if the appellants fail to execute the sale deed, the respondents 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 appellants. It was also held that the respondents are entitled to get

the entire costs of the suit from the appellants. It is aggrieved by the judgment and decree of the court below, the appellants are before us in this appeal. By order dated 20.12.2014, 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 7.1.2015 and the case was ordered to be posted before the Bench along with the report of the Mediator on 19.1.2015.

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 appellants/defendants have agreed to transfer the plaint schedule property to respondents/plaintiffs by executing a conveyance

deed prepared by them, on receipt of an additional amount of ₹10,24,600/-, which they have agreed to pay on or before 10.4.2015. The appellants/defendants are at liberty to withdraw the amount of ₹3,92,000/- deposited before the court below by the respondents/plaintiffs immediately on the passing of a decree in terms of the compromise. The appellants/defendants have to execute the sale deed regarding the plaint schedule property in O.S.No.52 of 2010 in favour of respondents/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 appellants/respondents refuse to accept the amount aforementioned and execute the sale deed, the respondents/plaintiffs can deposit the said amount before the Court of the Subordinate Judge of Kochi in O.S.No.52 of 2010 and get the sale deed executed through the court at the cost of the first 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 the respondents/plaintiffs to get refund of the entire court fee paid on the plaint, for which the appellants have no objection. The parties have also agreed that the judgment and decree passed by the trial court may be set aside and the suit 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 the decree, the first appellant/first defendant was directed to execute a sale deed in favour of the respondents/plaintiffs and put them in possession of the plaint schedule property after receiving the balance sale consideration of ₹3,92,000/-. Now by the compromise entered into between the parties, the appellants/defendants have agreed to transfer the plaint schedule property to the respondents/plaintiffs and/or their nominee on receipt of an additional sale consideration of ₹10,24,600/-. Only in cases where the terms of compromise necessitate a 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 can 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.52 of 2010 on the file of the Court of the Subordinate Judge of Kochi cannot be ordered to be refunded to the respondents/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.52 of 2010, we direct the appellants/defendants to execute a sale deed in respect of the plaint schedule property in favour of respondents/plaintiffs and/or their nominees after receiving an additional sale consideration of ₹10,24,600/- over and above the balance sale consideration of ₹3,92,000/-. The appellants/defendants will be at liberty to withdraw the amount of ₹3,92,000/- deposited before the court below by respondents/plaintiffs, immediately on the passing of

this judgment. In case the appellants/defendants refuse to receive the additional consideration as above mentioned and execute the sale deed, it will be open to the respondents/plaintiffs to deposit the said amount in the Court of the Subordinate Judge of Kochi to the credit of O.S.No.52 of 2010 and get the sale deed executed through the court at the cost of the appellants/defendants. 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 appellants/defendants have 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 appellants.

Sd/-
P.N.RAVINDRAN, JUDGE

Sd/-
ANIL K.NARENDRA, JUDGE

dsn