

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

MONDAY, THE 12TH DAY OF OCTOBER 2015/20TH ASWINA, 1937

WP(C).No. 30807 of 2007 (P)

IN OS 513/2002 of PRL.MUNSIFF COURT, PALAKKAD

PETITIONERS:

1. SAMANTHA SAMAJAM, LOTUS APARTMENTS,
GROUND FLOOR, BYE-PASS ROAD, KOPPAM PUTHUR ROAD
PUTHUR AMSOM DESOM, PALAKKAD TALUK
REP. BY ITS SECRETARY, A.P.GOPINATHAN KARTHA
AGED 65 YRS, S/O. T.V.U.NEDUNGADI.
2. MADATHIL RAMACHANDRAN, AGED 39,
S/O.V.KRISHNANKUTTY NAIR, FLAT NO.5,
LOTUS APARTMENTS BYE-PASS ROAD.,
KOPPAM PUTHUR ROAD., PUTHUR AMSOM
DESOM, PALAKKAD TALUK, REP.BY ITS P/A HOLDER MADATHIL
VIJAYAKUMAR, AGED 30, S/O. V.KRISHNANKUTTY NAIR

BY ADV. SRI.TOM K.THOMAS

RESPONDENTS:

1. THE PALAKKAD DISTRICT CO-OPERATIVE
BANK LTD., SULTANPET, PALAKKAD-678001
REP. BY ITS GENERAL MANAGER.
2. E.K.NARAYANAN,
SPECIAL SALE OFFICER, PALAKKAD DISTRICT CO-OPERATIVE
BANK LTD., SULTANPET, PALAKKAD-678 001.
3. THE JOINT REGISTRAR OF CO-OPERATIVE
SOCIETIES (GENERAL), PALAKKAD, CIVIL STATION
PALAKKAD-678 001.
4. MRS. ANNAMMA VISRUTHA KUMAR, AGED 44,
W/O. K.VISRUTHA KUMAR, (7/111 CHARUTHA, PUTHUR
ROAD, PALAKKAD), KATTALATH HOUSE
KALIPPARA, KOTTEKKAD AMSOM, PALAKKAD TALUK-678 001.
5. K.VISRUTHA KUMAR, AGED 47 YEARS,
S/O.LATE V.K.NAIR, PROPRIETOR, CHARUTHA KALYANA * DELETED
MANDAPAM AND AUDITORIUM, PUTHUR ROAD,
PUTHUR AMSAM, PALAKKAD TALUK
PIN 678 001.
6. A.P.DAMAYANTHI, W/O. LATE
C.GOPALAKRISHNAN, FLAT NO.2, LOTUS APARTMENT

BYE-PASS ROAD, PUTHUR AMSOM DESOM, PALAKKAD TALUK-678 001.

7. NAIR VEETIL MOHANDAS, AGED 38,
S/O. M.J.MENON, FLAT NO.3, LOTUS APARTMENTS
BYE-PASS, ROAD, KOPPAM PUTHUR ROAD
PUTHUR AMSOM, DESOM, PALAKKAD TALUK
REP.BY ITS P/A HOLDER, A.VASUDEVAN, 67 YRS
S/O.M.KRISHNAN NAIR, R/AT SANTHI, HARISREE COLONY,
VADAKKANTHARA AMSOM, DESOM, PALAKKAD TALUK-678 001.
8. KELATH SHILASH, 27 YEARS, S/O. (L) A.K. GOPINATH,
FLAT NO.4, LOTUS APARTMENTS, BYE-PASS ROAD.
KOPPAM PUTHUR ROAD., PUTHUR AMSOM
DESOM, PALAKKAD TALUK, REP. BY ITS P/A HOLDER,
K.MURALIDHARAN, AGED 46 YRS
S/O. (L) P.BALAKRISHNA NAIR, R/AT SOWPARNIKA,
SREENIDHI APARTMENTS, NAYAKA ROAD, V/375, KASARGODE-671121.
9. KESAVANUNNI MENON, S/O. P.DAMODARA MENON,
H/O. (L) PUSHPA MENON, 65 YEARS
RESIDING AT 25, GREEN GARDEN APARTMENTS, ACHARYA NAGAR
W.T.PATIL MARG, MUMBAI-407 088.
10. DAMODARAN K.MENON, AGED 26 YEARS,
S/O. (L) PUSHPA K.MENON, RESIDING AT 25, GREEN GARDEN
APARTMENTS, ACHARYA NAGAR, W.T. PATIL MARG
MUMBAI-407 088.
11. JANARDHANAN K.MENON, AGED 24, S/O.
(L) PUSHPA K.MENON, RESIDING AT, 25
GREEN APARTMENTS, ACHARYA NAGAR, W.T.PATIL MARG
MUMBAI-407 088.
12. LAKSHMI K.MENON, AGED 20 YEARS,
D/O. PUSHPA K.MENON, RESIDING AT 25,
GREEN GARDEN APARTMENTS, ACHARYA NAGAR, W.T.PATIL MARG
MUMBAI-407 088.

* R5 IS DELETED AS PER ORDER DATED 11.07.2013 IN IA 9746/2008

R.6 TO 12 BY ADV. SRI.SHEJI P.ABRAHAM
R1 BY ADV. SRI.M.P.ASHOK KUMAR
BY ADV. GOVERNMENT PLEADER SRI.THOMAS JOHN AMBOOKEN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
12-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P. (C) .NO.30807 OF 2007

APPENDIX

PETITIONERS' EXHIBITS :

EXHIBIT P1 : TRUE COPY OF THE O.S.513/2002 MUNSIF COURT, PALAKKAD

EXHIBIT P2 : TRUE COPY OF THE PROCEEDINGS OF THE SPECIAL SALE
OFFICER, PALAKKAD DISTRICT CO-OPERATIVE BANK DATED
18.05.2002.

EXHIBIT P3 : TRUE COPY OF THE ATTACHMENT ORDER DATED 30.01.2000.

EXHIBIT P4 : TRUE COPY OF THE ORDER O.S.513/2002 MUNSIF COURT,
PALAKKAD DATED 13.08.2007.

RESPONDENTS' EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

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SHAJI P. CHALY, J.

W.P.(C). No. 30807 of 2007

Dated this the 12th day of October, 2015

JUDGMENT

This writ petition is filed by the petitioners seeking to quash Ext.P4 order dated 13.08.2007 of the Munsiff Court, Palakkad, by which order, learned Munsiff has considered issue No.1 relating to court fee as a preliminary issue in O.S.513/2002 pending before it, consequent to which a Commissioner was appointed to value the property inclusive of the building situated thereon.

2. Brief facts for the disposal of the writ petition are as follows:

3. Petitioners are the 1st and 5th plaintiffs in OS 513/2002 on the file of the Munsiff Court, Palakkad. The other plaintiffs in the suit are impleaded as respondents Nos. 6 to 12 in the writ petition. The suit is filed seeking to set aside the attachment effected on 28.02.2001 as per order dated 03.01.2000 by the 3rd defendant in C.E.P 249/2000 in A.R.C 215/2000 over the plaint schedule property which is

extending to 11 cents. It is contended by the petitioners that the building situated in the property is not the subject matter of the attachment. Ext.P1 plaint reveals that, the petitioners as well as respondents 6 to 12 seek a decree against the order of attachment so far as the immovable property extending to 11cents alone.

4. The defendants entered appearance in the suit and filed a written statement opposing reliefs sought for, consequent to which the following issues were raised by the trial court.

- a) Whether the valuation of the suit and the court fee paid are correct?
- b) Is there any illegality and impropriety or irregularity in the order of attachment of the schedule property passed and effected in 3rd defendant? If so, is it liable to be declared as null and void and set aside?
- c) Is the prayer for permanent prohibitory injunction allowable?
- d) Reliefs and Costs?

5. The thrust of contentions raised in the suit is that the plaint schedule property originally belong to the 1st plaintiff,

who entered into an agreement with the 5th defendant for the construction of apartments which was reduced into writing on 10.12.1998. On the basis of the said agreement, the 5th defendant was put in possession of the property by the 1st plaintiff and thereafter, executed various agreements for sale with the other plaintiffs agreeing to convey undivided share in the plaint schedule immovable property and to construct apartments for the prospective buyers. Accordingly, plaintiffs were put in possession of the plaint schedule land by the 5th defendant in pursuance to the agreement so executed. The 5th defendant constructed apartments at the cost of the plaintiffs and they started residing in the apartments so constructed in the plaint schedule property from the year 2000 onwards. The entire sale price including the cost of land and building was paid in full by the plaintiffs to the 5th defendant.

6. It is the further contention of the petitioners that the plaintiffs learned that the 3rd defendant effected an attachment of the plaint schedule property on 28.02.2001 on

the strength of an award secured by the 1st defendant against the 4th defendant in ARC 215/2000. When the plaintiffs came to know about this, they filed claim petitions before the 2nd respondent under rule 90 of the Kerala Co-operative Societies Rules to set aside the attachment. By order dated 18.05.2002, the 3rd respondent found that the 4th respondent herein had no right at all to hypothecate the flats and 11 cents of land since there is no lawful actual physical possession of the said property with the 4th defendant in order to avail a loan of Rs.39,00,000/- from the bank. To cut a long story short, by Ext.P2 order, 3rd defendant has entered into several other findings also, narration of which is not required since the same may not have much bearing on the subject matter of this writ petition. Anyhow, the 3rd respondent declined jurisdiction to consider the claim petition in view of the disputed civil rights that arose by and between the parties and relegated the parties to the Civil court.

7. It was thus the attachment effected by the 3rd

respondent was challenged by the petitioners and others by filing OS 513/2002 before the Munsiff court, Palakkad.

8. As extracted supra, the first among the issues raised by the learned trial court was, whether the valuation of the suit and the court fee paid are correct? The plaintiffs as well as the bank were heard and the trial court has entered into a finding that, as provided under Section 41 of the Kerala Court fees and Suit Valuation Act 1959 (herein after called the 'Act'), the court fee for the immovable property as well as the building situated there on is to be valued. Now the short question is, what is the nature of court fee that is to be paid as provided under Section 41 of the Act. Section 41 of Act reads as follows:

41 SUITS TO SET ASIDE ATTACHMENT, ETC:-

(1) In a suit to set aside an attachment by a Civil or Revenue Court of any property, movable or immovable, or of any interest therein or of any interest in revenue, or to set aside an order passed on an application made to set aside the attachment, fee shall be computed on the amount for which the property was attached or on one-fourth of the market value of the property attached whichever is less.

(2) In a suit to set aside any other summary decision or order of a Civil or Revenue Court, if the subject-matter of the suit has a market value, fee shall be computed on one-fourth of such

value, and in other cases, fee shall be payable at the rates specified in Section 50.

Explanation-For the purpose of this section, the Registrar of Co-operative Societies shall be deemed to be a Civil Court.

9. Heard learned counsel for the petitioner and the respondents.

10. Leaned counsel for the petitioner contended that the nature of reliefs sought for by the petitioners and others in the suit is only to lift the attachment effected by the 3rd respondent against the immovable property. And therefore, the remittance of court fee under Section 41 of Act 1959 is only with regard to the extent of attachment effected by the 2nd respondent. Order of attachment of 3rd respondent is produced in the writ petition as Ext.P3 and the schedule of attachment shows that the attachment effected by respondent no.3 is only against the 11 cents of property in which a multi storied residential apartment is constructed. It may be true that a multi storied residential building is constructed on the immovable property extending to 11 cents. But here the question is the nature of court fee to be paid as per Section 41 of Act 1959 on the basis of a decree

sought for, for setting aside the attachment. The decree sought for is to lift the attachment against the 11 cents of property. Therefore, the building constructed is not a subject matter of consideration in the suit. I have verified Ext.P3 schedule of attachment along with the relief portion of Ext.P1 plaint and find that the main relief sought for is only to lift the attachment as per Ext.P3. Therefore it can be seen that the petitioners are seeking only the lifting of attachment of 11 cents of immovable property ordered by the 3rd respondent.

11. However, learned Government Pleader contended that since the loan availed from the 1st respondent was 39.5 lakhs and the attachment effected over the immovable property includes the building constructed thereon, the court fee has to be remitted under Section 41 of Act 1959, accordingly. Learned counsel for the 1st respondent supported the contention raised by the learned Government Pleader and contended that the entire property along with the building is mortgaged for availing the loan and therefore

while calculating the court fee, the nature of mortgage is also to be taken into account and viewed in that circumstances, the impugned order passed by the court below cannot be assailed in any manner.

12. Having considered the rival submissions, in my view, the question to be decided revolves from Section 41 of Act 1959 read with Ext.P3 attachment and the relief sought for in the suit filed by the petitioners. I have gone through the entire materials and the law involved in the subject matter and is of the considered opinion that since attachment ordered by respondent no.3 is only against 11 cents of property, which alone is the subject matter of the suit pending before the trial court, the petitioners are liable to pay court fee only for the immovable property attached as per Ext.P3 order of the 3rd respondent.

13. Having found so, Ext.P4 impugned order passed by trial court, appointing an Advocate Commissioner to value property taking into account the multi storied building situated thereon cannot be sustained under law. Therefore,

the property that is to be valued for the purpose of court fee, taking into account the facts and circumstances of this case is only the immovable property extending to 11 cents lying in Survey No.1296/4 of Palakkad Village. In view of the said findings, Ext.P4 order, so far as it is directing the Advocate Commissioner to value the multi storied building situated in the aforesaid property is set aside and it is directed that the immovable property extending to 11 cents explained above, alone need be valued, in accordance with the terms contained under Section 41 of Act 1959. The trial court is provided with liberty to decide, still the Advocate Commissioner is to value the immovable property extending to 11 cents. Learned counsel for the 1st respondent further submitted that the suit is pending from the year 2002 onwards and therefore an early disposal of the same may be ordered. The stage of the proceedings is found to be at raising of issues and therefore I can only direct the court below to take a decision after completing the entire proceedings at the earliest, and if possible, within a period

of six months from the date of receipt of a copy of this judgment.

Writ petition is allowed accordingly.

Sd/-
SHAJI P. CHALY
JUDGE

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