

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 18TH DAY OF MARCH 2015/27TH PHALGUNA, 1936

WP(C).No. 33528 of 2014 (M)

PETITIONER:

**SAIFUDEEN M.,
S/O.MOHAMMED KANNU, KUNNUVILA VEEDU,
PUTHUSSERY MUKKU P.O., KALLAMBALAM.**

**BY ADVS.SRI.P.K.MUHAMMED
SRI.MURAMEL A.N.SHAJI**

RESPONDENT(S):

- 1. THE DISTRICT COLLECTOR,
THIRUVANANTHAPURAM, PIN - 695 005.**
- 2. THE DISTRICT REGISTRAR (GENERAL),
TRANSPORT BHAVAN, FORT P.O.,
THIRUVANANTHAPURAM - 695 023.**
- 3. THE DEPUTY TAHSILDAR (REVENUE RECOVERY),
VARKALA TALUK, PIN - 695 141.**
- 4. THE VILLAGE OFFICER,
KUDAVOOR, PIN - 695 313.**
- 5. A.NASSARUDHEEN, S/O.ABDUL RAHMAN,
KAVUVILA VEEDU, MAMAM, KORANI P.O.,
ATTINGAL - 695 101, THIRUVANANTHAPURAM.**

**R1 TO R4 BY GOVT. PLEADER SMT.SOBHA ANNAMMA EAPEN
R5 BY ADVS. SRI.A.ABDUL KHARIM
SRI.M.SREEKUMAR**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 18-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

mbr/

APPENDIX

PETITIONER(S)' EXHIBITS:

EXHIBIT P1: TRUE COPY OF THE PLAINT IN O.S.NO.290/2011 BEFORE THE HON'BLE SUB COURT, ATTINGAL DATED 07.10.2011.

EXHIBIT P2: PHOTOGRAPH OF THE RENT DEED DATED 05.09.2002 EXECUTED BETWEEN THE PETITIONER AND THE 5TH RESPONDENT.

EXT. P2(A): TRUE COPY OF THE LEASE DEED DATED 01.01.2003 EXECUTED BETWEEN THE PETITIONER AND THE 5TH RESPONDENT.

EXT. P2(B): TRUE COPY OF THE LEASE DEED DATED 01.10.2003 EXECUTED BETWEEN THE PETITIONER AND THE 5TH RESPONDENT.

EXT. P2(C): TRUE COPY OF THE LEASE DEED DATED 01.01.2007 EXECUTED BETWEEN THE PETITIONER AND THE 5TH RESPONDENT.

EXT. P2(D): TRUE COPY OF THE LEASE DEED DATED 01.08.2008 EXECUTED BETWEEN THE PETITIONER AND THE 5TH RESPONDENT.

EXT. P2(E): TRUE COPY OF THE LEASE DEED DATED 01.02.2010 EXECUTED BETWEEN THE PETITIONER AND THE 5TH RESPONDENT.

EXHIBIT P3: TRUE COPY OF THE JUDGMENT DATED 20.01.2014 IN O.S.NO.290/2011 OF THE SUB COURT, ATTINGAL.

EXHIBIT P4: TRUE COPY OF THE LETTER ADDRESSED BY THE SUB COURT ATTINGAL TO THE 1ST RESPONDENT DATED 29.01.2014.

EXHIBIT P5: TRUE COPY OF THE NOTICE SERVED ON THE PETITIONER BY THE 3RD RESPONDENT DATED 19.11.2014.

EXHIBIT P6: TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE 3RD RESPONDENT DATED 08.12.2014.

RESPONDENT(S)' EXHIBITS: - NIL

/TRUE COPY/

P.A. TO JUDGE

mbr/

A.K.JAYASANKARAN NAMBIAR, J.

.....
W.P.(C) No.33528 of 2014 (M)
.....

Dated this the 18th day of March, 2015

JUDGMENT

The petitioner, who was the defendant in O.S.No.290 of 2011 on the file of Sub Court, Attingal, is aggrieved by Ext.P5 attachment notice issued under the Kerala Revenue Recovery Act, 1968, in connection with recovery of an amount of Rs.16,41,925/- stated to be differential stamp duty recoverable from him, in respect of a lease agreement entered into between the 5th respondent and the petitioner.

- 2.The facts in the writ petition would reveal that, in the aforementioned suit, Ext.P3 judgment came to be passed wherein the Subordinate Judge, Attingal, found that the 5th respondent had sought for marking six documents styled as licence deeds. On going through the contents of the said documents, the Court was of the view that, the nature of the transaction that was covered by the document showed it to be a lease agreement and not a licence. The court thereafter found that if it was a lease, then, it was insufficiently stamped and called upon the 5th respondent to pay the deficit stamp duty and penalty. When the 5th respondent refused to pay the deficit stamp duty and penalty, the court refused to mark the documents, on the ground that the document sought to be marked where insufficiently stamped. The court, thereafter,

proceeded to impound the document and forward the same to the 1st respondent. Pursuant to that, the 1st respondent demanded the differential stamp duty, together with penalty, from the petitioner, who was the defendant in the suit. It is challenging the said recovery notice issued to him that the petitioner has filed this writ petition.

3. In the counter affidavit filed on behalf of the 5th respondent, the stand taken is that, as per the provisions of Section 30(b) of the Kerala Stamp Act, 1959, (for short, the 'Act, 1959') in the case of a lease or agreement to lease, the stamp duty is payable by the lessee or intended lessee. The contention, therefore, is that even if, there was a deficit in stamp duty that was detected, the liability to pay the said deficit, together with penalty, accrued to the lessee, who in this case is the petitioner. It is contended that the only consequence of a detection of deficit stamp duty as far as the 5th respondent is concerned, is that in proceedings where he sought to rely upon the document, he would not be permitted to rely on the said document in evidence.

4. I have heard Sri.P.K.Muhammed, the learned counsel for the petitioner, Sri.A.Abdul Kharim, the learned Standing counsel for the 5th respondent and Smt.Sobha Annamma Eappen, the learned Government Pleader for the respondent Nos.1 to 4.

5. On a consideration of the facts and circumstances of the case and the submissions made across the Bar, I find that, in Ext.P3 judgment of the Sub Court, Attingal, it is observed that, the document relied upon by the 5th respondent evidenced a lease transaction, and not a licence as contended by him in the suit. The 5th respondent did not pay the deficit stamp duty, when called upon to do so, and accordingly, was not permitted to rely on the said document for the purposes of the suit. The suit was finally decreed by accepting the contentions of the 5th respondent, with regard to nature of the transaction.

6. The court below, however, impounded the document and transmitted the same to the 1st respondent for the purposes of determining the stamp duty payable on the instrument and recovering the same in accordance with the provisions of the Kerala Stamp Act, 1959. It was in those proceedings that the 1st respondent found that a differential stamp duty, by treating the document as a lease instrument, had to be recovered from the lessee, who in this case was the petitioner.

7. I note from the averments in the writ petition that, when served with Ext.P5 notice, the petitioner has preferred a detailed objection, by way of Ext.P6. The contention of the petitioner that, the document in question does not reflect a lease

transaction, and further, that the document was impounded pursuant to a non compliance, by the 5th respondent, with a direction for payment of deficit stamp duty, has also to be gone into by the 1st respondent. It is also the case of the petitioner that, he was not served with any order by the District Collector prior to Ext.P5 notice. Taking the said contention into account, I dispose the writ petition with a direction to the 1st respondent to consider and pass orders on Ext.P6 objection filed by the petitioner, before the 3rd respondent, after calling for the said document from the 3rd respondent. The 1st respondent shall pass orders, as directed, after hearing the petitioner and the 5th respondent, within a period of two months from the date of receipt of a copy of this judgment.

8. The interim stay against recovery, that was granted by this Court, shall continue to be in force till such time as the 1st respondent passes orders, as directed, and communicates the same to the petitioner. The petitioner shall produce a copy of this judgment, along with a copy of Ext.P6 objection, before the 1st respondent for further steps.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE