

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K.HARILAL

&

THE HONOURABLE MRS. JUSTICE ANNIE JOHN

THURSDAY ,THE 27TH DAY OF SEPTEMBER 2018 / 5TH ASWINA, 1940

RFA.No. 448 of 2010

AGAINST THE JUDGMENT & DECREE IN OS 153/2004 of III ADDL.SUB COURT,  
ERNAKULAM DATED 08-10-2009

APPELLANT/S/PLAINTIFFS:

- 1 TESSY THOMAS,  
AGED 44 YEARS, W/O. LATE THOMAS GEORGE, GREEN VILLA,  
GOKULAM COLONY,, KOVAIPUDUR, COIMBATORE-641 042
- 2 BAVY TESS THOMAS GEORGE,  
S/O.LATE THOMAS GEORGE, MINOR 16 YEARS, BY GUARDIAN &  
NEXT FRIEND-1ST APPELLANT.

BY ADVS.  
SRI.DINESH R.SHENOY  
SMT.K.K.JYOTHILAKSHMY  
SRI.A.JOSEPH GEORGE  
SRI.EBIN MATHEW  
SRI.M.B.RATHEESH

RESPONDENT/S:

- 1 SMT.DOLLYKUTTY GEORGE, 440,  
CIRCLE BLUE VELL, PHILADEPHIA 19422,, UNITED STATES OF  
AMERICA.
- 2 ANNE DELLA GEORGE, D/O.DOLLYKUTTY GEORGE,  
440,CIRCLE BLUE VELL, PHILADEPHIA 19422,, UNITED STATES OF  
AMERICA.
- 3 ANITHA STELLA GOROGGE,  
D/O.DOLLYKUTTY GEORGE, 440,, CIRCLE BLUE VELL, PHILADEPHIA  
19422,, UNITED STATES OF AMERICA.

- 4 ASHA GEORGE DOLLYKUTTY GEORGE 440  
CIRCLE BLUE VELL, PHILADEPHIA 19422,, UNITED STATES OF  
AMERICA.
- 5 THOMAS GEORGE, S/O.DOLLYKUTTY GEORGE  
440,CIRCLE BLUE VELL, PHILADEPHIA 19422,, UNITED STATES OF  
AMERICA.
- 6 ULLAS M.R.SO.M.N RAMADAS  
MADYAMPARAMBIL, TRIPUNITHURA, NADAMA VILLAGE,,  
KANAYANNOOR TALUK.
- 7 M.R.HANS SO.LATE M.N.RAMADAS  
MADYAMPARAMBIL, TRIPUNITHURA, NADAMA VILLAGE,,  
KANAYANNOOR TALUK.
- 8 M.R.DEEPA, S/O.LATE M.N.RAMADAS  
MADYAMPARAMBIL, TRIPUNITHURA, NADAMA VILLAGE,  
KANAYANNOOR TALUK.
- 9 M.R.MURUKESH SO.LATE M.N.RAMADAS  
MADYAMPARAMBIL, TRIPUNITHURA, NADAMA VILLAGE,  
KANAYANNOOR TALUK.
- 10 M.R.SHYAM SO.LATE M.N.RAMADAS  
MADYAMPARAMBIL, TRIPUNITHURA, NADAMA VILLAGE,  
KANAYANNOOR TALUK.
- 11 M.THOMAS VARGHESE SO. M GEE GARGHESE  
THOMAS, 3/958A,PAZHAYIDATH HOUSE,THRIKKAKARA P.O.,,  
VAZHAKKAL VILLAGE, KANAYANNOOR TALUK.
- 12 JOHN MATHEW SO.M.YOHANNAN 32/2268,  
JEROME HOUSE, PALARIVATTOM, EDAPPALLY SOUTH,,  
KANAYANNOOR TALUK.
- 13 V.P.GEORGE, S/O. PAUL,  
VAZHAKALAYIL HOUSE, COCHIN UNIVERSITY ROAD, COCHIN  
UNIVERSITY P.O.,NJALAKAMKARA, THRIKKAKARA, NORTH  
VILLAGE, KANAYANNOOR TALUK, ERNAKULAM.

BY ADVS.  
SRI.GEORGE CHERIAN (SR.)

THIS REGULAR FIRST APPEAL HAVING BEEN FINALLY HEARD ON

27.09.2018, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

## JUDGMENT

Annie John,J.

This appeal is filed against the judgment and decree dated 08.10.2009 passed by the Third Additional Subordinate Judge, Ernakulam in O.S. No. 153 of 2004 filed by the plaintiffs. The suit has been filed for a declaration that certain documents brought about in a fraudulent and sham manner are liable to be declared void and inoperative.

2. The defendants entered appearance and filed a written statement opposing the prayers. The learned Additional Subordinate Judge, as per order dated 08.10.2009, rejected the plaint on the ground that the direction to pay the balance court fee for the additional relief of setting aside the document was not complied with.

3. The learned counsel for the appellants/plaintiffs contended that the plaintiffs need not pay the court fee for the additional prayer and the requisite court fee had been paid. It is further contended that the view taken by the court below is contrary to the decision of the Supreme Court in ***Sathidevi v. Prasanna***<sup>1</sup>, in which it is held that in a suit for cancellation of a document which creates any right, title or interest in immovable property, court fee is to be computed on the

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<sup>1</sup> 2010 (2) KLT 642

value of the property for which the document was executed and not on the market value of the property.

4. The main grievance of the appellants is that without considering the issue, the Court has passed a non-speaking order stating that the balance court fee is not paid.

5. We have heard the learned counsel for the appellants, apart from perusing the records.

6. In the impugned judgment, it is recorded that the plaintiffs have not paid the required court fee for the additional relief. In the circumstance, the plaint is liable to be rejected; but no grounds are mentioned in the judgment. It is also not stated whether the suit was posted for paying the balance court fee for the additional relief. So, the judgment itself is found to be not a speaking order and no reason is stated on what ground the court fee was fixed. Therefore, we are of the view that the appellants can be given a further opportunity to establish the above said grounds. Accordingly, the order of the lower court below is set aside and the court below is directed to re-consider the matter afresh and pass appropriate orders on the strength of the arguments advanced by the the appellant herein.

7. The court below is directed to consider the question of paying

the balance court fee for the additional relief within two weeks from the date of receipt of a copy of this judgment and dispose the case within three months thereafter. The registry is directed to return the lower court records forthwith.

This appeal is disposed of as above.

Sd/-

**K. HARILAL,  
JUDGE.**

Sd/-

**ANNIE JOHN,  
JUDGE.**

*Rv*

