

IN THE COURT OF SUB JUDGE, KOCHI

Present:

Smt. Rejani Thankappan, Sub Judge, Kochi

Wednesday, the 16th day of July, 2025/25th Ashadam, 1947

I.A No. 05/2025 in O.S. No.60/2017

Petitioners/Defendants 2 to 3 :-

1. Philomina K.V, aged 62 years, W/o. Sebastian, CC 1/951(1), Kinkaranthara House, Fortkochi Village, Kochi Taluk.
2. Sebastian, aged 72 years, S/o. Joseph, CC 1/951(1), Kinkaranthara House, Fortkochi Village, Kochi Taluk.

By Advs. Vipin D.G, Sreekumar G Chelur & Eldhose M Varghese

Respondents/Plaintiffs/Defendants 1, 4 to 18 :-

1. Mary Joseph, aged 76 years, W/o. Joseph @ Vacachan(deceased), CC 1/973, Palliparambil House, Kottavalappu Desom, Fortkochi Village, Kochi Taluk.
2. Linda Joseph, D/o. Mary Joseph, CC 1/973, Palliparambil House, Kottavalappu Desom, Fortkochi Village, Kochi Taluk.
3. Chirstopher Joe P, S/o. Joseph Joe, Palliparambil Orumanayur Desom, Chavakkadu Village, Chavakkadu Taluk.
4. Muralidharan T.R, S/o. Raghavan Nair, Krishnakripa Amaravarthi Desaom, Fortkochi.
5. Liju, S/o. Mary Joseph, CC 1/951(1), Kinkaranthara House, Fortkochi Village, Kochi Taluk.
6. Laly Fexon, W/o. Fexon, 27/364, Cheriyaarambil House, Mathoottiparambu, Nazarath, Kochi -2.
7. Lincy, W/o. Renjith, Pulimoottil House, Vettukadu P.O., Ezhamkallu, Trissur.
8. Annet @ Anitha, W/o. Muralidharan, Flat No. 3D, Infra Hillo, Phase III, Parijatha Road, Pathadipalam, Kalmasserry.
9. Sarasamma Joseph, Perandoor House, Malipuram P.O., Valappu.
10. Celin David, W/o. Late Achankunju, Pallithoppil, Kusumavilasum, Kumarakam P.O., Kottayam.
11. Denson, S/o. Late Achankunju, Pallithoppil, Kusumavilasum, Kumarakam P.O., Kottayam.

12. Jancy Wilson, Pallithoppil, Kusumavilasam, Kumarakam P.O., Kottayam.
13. Joy Markose, Kusumavilasam, 11/1655, Kadebhagam, Palluruthy.
14. Maxon, S/o. David, St. Francis Xavier, Housing Colony, Eramalloor, Cherthala Taluk.
15. Milton, S/o. David, St. Francis Xavier, Housing Colony, Eramalloor, Cherthala Taluk.
16. Nelson, S/o. David, St. Francis Xavier, Housing Colony, Eramalloor, Cherthala Taluk.
17. Danny Xavier, S/o. Kunjumon, Kusumavilasam, Door No.177, Housing Board Colony, Beach Road, Kochi -2.
18. Duna Xavier, S/o. Kunjumon, Kusumavilasam, Door No.177, Housing Board Colony, Beach Road, Kochi -2.

R1 & 2 by Adv. Lilly Antony

R3 by Advs. Ravikumar U, P.P Raphealkutty & P.R Thomachan

R4 Adv. K.N Sivasankaran

R5, 7 to 9, 12 to 15, 17 & 18 by Adv. Jolly John K

Others vakkalath not filed.

This petition is filed under Order XIV Rule 2 and Section 151 of the Code of Civil Procedure 1908.

This petition having come up for hearing before me on 25.06.2025 and the court on 16.07.2025 passed the following :-

ORDER

This petition is filed by the petitioner under Order XIV Rule 2(2) u/s.151 of the Civil Procedure Code 1908 to frame the issue regarding payment of Court fee as a preliminary issue and to adjudicate upon the same before commencing the evidence.

2. The petition averements in brief are as follows:-

The petitioners are the original first and second defendants in the suit. The suit is filed by the respondents/plaintiffs to declare the sale deed Nos.3915/2014 and 2632/2015 of Kochi SRO are null and void and not binding on the plaintiffs and the defendant Nos.5 to 18, the legal heirs of Tresia. According to the petitioners, the respondents had shown the valuation of the relief as Rs.32,63,750/- (Rupees thirty two lakhs sixty three thousand seven hundred and fifty only). But, they had paid the court fee only Rs.1000/- (Rupees ten thousand only) u/s.25(d)(ii) of the Kerala Court Fees and Suit Valuation Act, which is illegal and incorrect. The respondents/plaintiffs ought to have paid the court fee contemplated u/s.40 of the Kerala Court Fees and Suits Valuation Act 1956. Hence, the valuation of the plaint schedule properties shown in the schedule is improper. Hence the petitioner prays for dismissing the suit on that ground. In addition to this, the petitioners alleged that the suit is not properly instituted, hence the suit is bad for non joinder of necessary party also.

3. The respondents filed counter affidavit with following contentions:-

The suit is not maintainable either in law or on facts. This petition is filed as an experimental nature to protract the fraudulent activities of the petitioners, who snatched away the plaint schedule property inclusive of the kudikidappu property of these respondents/plaintiffs by executing sale deed Nos.3915/2014 and 2632/2015 of Kochi SRO. The respondents/plaintiffs are non executants to the

above said sale deeds and when they seek annulment of a deed they can only seek a declaration that the deed is null and void and non-est and illegal and not binding on them. The suit is not for cancellation of document. The respondents/plaintiffs had filed this suit to declare null and void the above said deeds and not binding on the plaintiffs for which, has to merely pay a fixed court fees, u/s.25(d)(ii) of the Kerala Court fees and Suit Valuation Act. It is also contended by the respondents/plaintiffs that the second respondent/second plaintiff is a differently abled and she is not able to speak legibly and is having some hearing problem. She had passed her secondary school examination and obtained the qualifying certificates and now she is leading a married life. She has no mental incapacity or unsound, needs to sign and file the suit. Hence, there is no question of non joinder of necessary party or there is no question regarding non representation of the plaintiffs/respondents in this case.

4. Heard both sides.

5. Following points arised for consideration:-

- (i) Whether the suit is properly valued or not?
- (ii) Whether the parties in the suit are properly represented or not?

6. **Point No.1** :-

According to the petitioner, the respondents/plaintiffs had paid court fee of only Rs.1,000/- u/s.25(d)(ii) of the Kerala Court Fees and Suits Valuation Act.

Infact, they ought to have paid the court fees as u/s.40 of the Kerala Court Fees and Suit Valuation Act 1959. The respondents contended that the suit is not for cancellation. It is filed for declaration that the alleged documents are null and void. At the time of hearing the Learned Counsel for the petitioner argued that the respondents/plaintiffs ought to have filed the court fee u/s.25(d)(i) when the subject matter of the suits are capable of calculating the court fee. As per Section 25(d)(i) of the Court fees and suit valuation Act, the court fees is capable of valuation, fee shall be computed on the market value of the property. As per Section 7 of the Kerala Court Fees and Suit Valuation Act, the valuation of the property must be referred as the market value of the property shall be determined as on the date of presentation of the plaint. Hence, the Court fee to be calculated is based on the market value of the property.

7. On the other hand, the Learned Counsel for the respondents argued that considering the facts of this case the respondents/plaintiffs are the non executant of the document. Hence, need not pay ad-voleram court fee and they are liable to pay only the prescribed court fee. From the facts of the case itself it can be seen that, the respondents/plaintiffs are the non executant of the document and they ought to be declared the said documents are null and void. Hence, the petitioners need to pay only the prescribed fee. Section 40 of the Kerala Court Fees and Suit Valuation Act deals with the valuation of the suits for cancellation of decrees or

other documents. Court fees in such suits are to be computed based on the value of the subject matter, which is the amount or value of the property for which decree was passed, or the document was executed. Here the suit is for declaring the documents are null and void. Hence section 40 of the Kerala Court Fees and Suit Valuation Act is not applicable in this case.

8. Considering the rival contentions between the parties and on perusal of records it is seen that, the suit is filed by the respondents/plaintiffs for declaring the sale deed No. 3915/2014 and sale deed No. 2632/15 of Kochi SRO in null and void and not binding on the plaintiffs and the defendants 5 to 18, and for a decree of permanent prohibitory injunction. Hence the respondents/plaintiffs remitted Rs.1000/- under Section 25(d)(ii) of the Kerala Court Fees and Suit Valuation Act and Rs.500/- under section 27 (c) of Kerala Court Fees and Suit Valuation Act.

9. Section 25(d) of the Kerala Court Fees and Suit Valuation Act 1959 deals with the Court Fees payable in suits for declaration. Specifically, it outlines the fee calculation for declaratory suits where the subject matter is capable of valuation, but, does not fall under the other categories specified in Section 25(a), (b) and (c). In such a case, the court fees is computed on the market value of the property or on a fixed amount (currently Rs.1,000/-) whichever is higher.

Section 25(d)(ii) of the Kerala Court Fees and Suit Valuation Act, 1959 pertains to two suits.

In other cases:-

- (i) Where the subject matter of the suit is capable of valuation, fee shall be computed on the market value of the property and*
- (ii) Where the subject matter of the suit is not capable of valuation, fee shall be computed on the amount at which the relief sought is valued in the plaint or on (rupees One thousand) whichever is higher.*

10. The Learned Counsel for the respondents relied on *Suhrid Singh @ Sardool Singh vs. Randhir Singh and others*[2010(12)SCC112] and submitted that the Hon'ble Supreme Court has specifically classified these two types of court fees and differentiated by illustrating with example.

“ In **Suhrid Singh @ Sardool Singh Vs. Randhir Singh & Ors**(2010 (12) SCC 112), it is held that :-

“Where the executant of a deed wants it to be annulled, he has to seek cancellation of the deed. But if a non-executant seeks annulment of a deed, he has to seek a declaration that the deed is invalid, or non-est, or illegal or that it is not binding on him. The difference between a prayer for cancellation and declaration is regard to a deed of transfer/ conveyance, can be brought out by the following illustration relating to ‘A’ and ‘B’ – two brothers. “A” executes a sale deed in favour of ‘C’, Subsequently ‘A’ wants to avoid the sale. ‘A’ has to sue for cancellation of the deed. On the other hand, if ‘B’, who is not the

executant of the deed, wants to avoid it, he has to sue for the declaration that the deed executed by 'A' is invalid/void and non-est/illegal and he is not bound by it. In essence both may be suing to have the deed set aside or declared as non-binding. But the form is different and court fee is also different. If 'A', the executant of the deed, seeks cancellation of the deed, he has to pay ad-voleram court fee on the consideration stated in the sale deed. If 'B', who is a non-executant, is in possession and sues for a declaration that the deed is null and void and does not bind him or his share, he has to merely pay a fixed court fee or Rs.19.50 under Article 17(iii) of Second Schedule of the Act. But if 'B', a non-executant, is not in possession, and he seeks not only a declaration that the sale deed is invalid, but also the consequential relief of possession, he has to pay an ad-volerem court fee as provided under Section 7(iv)(c) of the Act."

Considering all these aspect, it can be seen that it is settled principle of law that if a non-executant, is in possession he can sue for a declaration that the deed is null and void and does not bind him, he has to merely pay a fixed court fee. In this case the respondents/plaintiffs are non executent of the document.

11. In this case the respondents/plaintiffs sought for an injunction restraining the 2nd defendant and their men from alienating encumbering the plaint schedule property, from inducting strangers into the plaint schedule property and from committing waste of the plaint schedule property. According to the respondents/plaintiffs the injunction sought for is no way related to the possession, this is only ancillary relief to prevent the unauthorised further transfer of the plaint schedule property. In this case the respondents/plaintiffs paid Rs.500/- as court fee for relief of injunction. As per Section 27(c) of the Kerala Court Fees and Suit Valuation Act Rs. 500/- is necessary for an injunction. Hence there is no necessity to pay further court fee by the respondents/plaintiffs.

12. The petitioners/defendants had filed this petition with an allegation that the court fee ought to have paid by the respondents/plaintiffs is the court fee contemplated under section 40 of the Kerala Court Fees Act. At the time of hearing the petitioners/defendants put forth an argument that the court fee ought to have paid is under section 25(d)(i) of the Act. The petitioners/defendants have no such a pleading in their petition.

13. In **Joseph vs. Jose [2012 (3) KLT-261]** it is also held by the Hon'ble High Court of Kerala that :-

“It may at once be noticed that the plaintiff is not a party to the cancellation deed and therefore need not seek to annul the same by

paying court fee under Section 40 of the Court Fees Act. It is sufficient if the plaintiff avoids the transaction and seeks the declaration that the cancellation deed is null and void by paying court fee under Section 25(d) (ii) of the Court Fees Act. “[see in this connection Usman Kurikkal Vs.Parappur Achuthan Nair [2012 (3)KLT 261] and Suhrid Singh @ Sardool Singh Vs. Randhir 2 OP(C) No. 1362/2012 Sing & others[2010 AIR SC 28074]”

The above judgment of the Hon’ble High Court is based on the judgment of the Apex Court in Suhrid Singh @ Sardool Singh Vs.Randhir Singh and others [2010(12)SCC 112].

Fortifying the above said decisions this court finds that since the respondents/plaintiffs are non executant of the document, sought to be declared the documents are null and void, are liable to pay the court fees u/s.25(d)(ii) of the Kerala Court Fees and Suit Valuation Act. Hence, Point No.1 is found against the petitioners.

14. Point No.2:-

In this case the petitioners/defendants alleged that the suit is not properly instituted. The respondents/plaintiffs contended that the second plaintiff is differently-abled person. Though she is not able to speak legibly and is having some hearing problem, she passed her secondary school examination and now she

is leading a married life. Considering these contentions it can be conclude that whether the suit is properly filed or not is a matter of evidence. Hence, this question can be considered at the time of the trial of the suit.

In the result,

Petition dismissed. No order as to costs.

Dictated to the Confidential Assistant, typed by her corrected by me and pronounced in open court on this the 16th day of July, 2025.

Sd/-
REJANI THANKAPPAN,
SUB JUDGE

APPENDIX:-Nil

Typed by:ancy
Comp. by:sabeena

Sd/-
SUB JUDGE
(By Order)

True copy

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