

IN THE COURT OF THE MUNSIF, KOCHI

Present :-

Smt. Simi P Siju, Additional Munsiff

Monday the 27th day of January, 2026/ 7th Magha, 1947

I.A No.08/2025 IN OS No 444/2014.

Petitioners/ Defendants:

1. B S Ramesh, S/o. Late Baban (Narayanan), House No X/201, North Janardhana Temple Street, Amaravathy, Kochi-682001.
2. R Raghuraj, S/o. Late Ramachandran (Goldsmith), Gopalakrishna Temple South Theruvu, Amaravathy, Kochi- 682 001.
3. Venu (Goldsmith), S/o. Late Ramakrishnan, Gopalakrishna Temple South Theruvu, Amaravathy, Kochi-682 001.
4. M Prabhakaran, S/o. Late Manjunath, S S Krishna Street, Amaravathy, Kochi-682 001.
5. Kannan, S/o. Late Sitharaman, Gopalakrishnan Temple Street, Krishna Street, Amaravathy, Kochi-682 001.

By Adv. Uma R Kamath

Respondents/Plaintiff/Defendants 5,6,7 and Addl 9th :

1. Sree Gopalakrishna Temple Trust, represented by its Managing Trustee, G Vishwanath Shet, S/o. Girivas Shet, aged 63 years, Amaravathy, Fort Cochin Village, Kochi-682 001.
2. Prakash (Goldsmith), S/o. Umanath, Father Gomez Road, Amaravathy, Kochi-682 001.
3. L Hari, S/o. Late Lakshmanan, Gopalakrishna Temple Street, Krishnan Street, Amaravathy, Kochi-682 001.
4. B S Rajeev, S/o. Late Baban (Narayanan), House No X/201, North Janardhana Temple Street, Amaravathy, Kochi-682 001.
5. Sree Gopalakrishna Devaswom represented by President/Managing Trustee, Suraj Sheth, S/o. Suresh Sheth, House No 28/1088,

Mulleparambu Lane, S S Krishnan Road, Vely, Kochi-682 001.

D1- By Adv. Leela R.

D2, 3 &4- No Vakalath

D5 – By Adv M P Ramnath & Mayflower B J

This petition filed under Order 14 Rule 1&2 read with Section 12(2) of the Kerala Court Fees & Suit Valuation Act 1959 and come up for hearing before me on 15.01.2026 and the court on 27.01.2026 passed the following:-

ORDER

Petition filed by the petitioner to hear and decide the issue as preliminary issue .

2. **The petition summary is as follows:-** The petitioner is the 2nd defendant in the above suit. The petitioners have filed a written statement and later the written statement was amended. Thereafter an amended written statement was also filed. In the written statement filed by the defendants 1 to 4 and 8, it is specifically in detail pleaded and stated that the valuation shown and court fees paid are incorrect. It is further in detail stated as to how and why the reliefs are not valued and due and proper court fees not paid. In spite of such detailed and specific objections to the valuation and court fees raised in their written statement and also in the written statement of additional 9th defendant, apparently by an inadvertent omission has failed to raise the issue as to whether the

valuation and court fees shown in the plaint is sufficient. If the suit is valued properly this court will have no jurisdiction to entertain and adjudicate this suit. No statement of the value of the subject matter of the suit for the purpose of jurisdiction and court fees is shown in the plaint as required by Order VII Rule 1. The same is a very important and serious issue and if it is duly found that the valuation shown and court fee paid are incorrect and insufficient the plaint will be upon insufficient court fees and if the plaintiff not paying the full and sufficient court fees, the plaint would be rejected. Also, upon insufficient court fee paid trial cannot commence or the suit cannot be tried.

3. Further it is mandate of law u/s 12(2) of the Kerala Court Fees and Suits Valuation Act that all questions arising on the pleadings and questions of the reliefs/subject matter of the suit has not been properly valued or that the fee paid is not sufficient, has to be heard and decided before evidence is recorded. Hence the issue of correctness of valuation and sufficiency of court fees in the plaint be heard and decided, first as preliminary issue.

4. The respondent/plaintiff filed counter stating that the petition is not maintainable either in law or on facts. In fact the above IA is an experiment to enlarge time and to avoid answering

the interrogatories. The above suit was filed for declaration of title in the trust property. The defendants themselves have stated in the written statement that the property is a temple property under Gopalakrishna Devaswam. The temple property being trust property the plaintiff had duly filed court fee u/s 25 (d)(ii) of the Court Fees and Suit Valuation Act. It is only to avoid giving answers to the interrogatories that the petitioners herein are making contentions that the court fee paid is improper. The suit was filed as early as 2014 and the respondents have not taken any steps to raise the question of suit valuation or maintainability of the suit. The petitioners herein have no title or documents to show that the committee was elected. It is to avoid answering the interrogatories that the above IA is filed. Even if the contention is accepted, the court is not based on the full market value. Instead, it is calculated on 50% of the property's market value, with a minimum fee based on a value of Rs.1000/- and if the court fee is wrongly shown or is insufficient in a plaint, the court has the discretion u/s 149 of CPC to grant time to the plaintiff to make up the deficiency. The primary remedy is to pay the deficit court fee within the time fixed by the court. In the instant case the defendants are willfully trying to bring in the suit which is for a declaration of title as the legal heir and managing trustee of the temple and not claiming

any title over the properties of the temple. The suit is for a declaration as managing trustee for managing the affairs of the temple for which the court fee has been duly and properly filed. Hence the petition may be dismissed with costs.

5. **The following points arise for consideration:-**

- a. Whether the issue regarding valuation and sufficiency of court fee is liable to be decided as a preliminary issue ?

6. Heard both sides.

7. **The point:** The present application is filed by the petitioner seeking that the valuation shown in the plaint and the court fee paid are incorrect and insufficient, and that the issue regarding valuation and court fee ought to be decided as a preliminary issue under Section 12(2) of the Kerala Court Fees and Suits Valuation Act before recording evidence.

8. The specific case of the petitioner is that in the written statement filed by defendants 1 to 4 and 8, as well as by the additional 9th defendant, specific objections were raised regarding improper valuation and insufficiency of court fee. It is further contended that the plaint does not disclose the value of the subject matter for the purpose of jurisdiction as mandated under Order VII

Rule 1 of the Code of Civil Procedure. According to the petitioner, if the suit is properly valued, this Court will lack pecuniary jurisdiction and the plaint would be liable to rejection for non-payment of proper court fee.

9. On the other hand, the respondent contended that the application is not maintainable and is filed only to protract the proceedings and to avoid answering interrogatories. According to the plaintiff, the suit is one for declaration of status as managing trustee of a temple, which is admittedly a trust property. The defendants themselves have pleaded that the property belongs to Gopalakrishna Devaswom. Therefore, the suit has been properly valued under Section 25(d)(ii) of the Kerala Court Fees and Suits Valuation Act and the court fee paid is correct. It is further contended that even assuming there is any defect in valuation, the law permits the Court to grant time under Section 149 CPC to make good the deficit, and the plaint cannot be rejected at the threshold.

10. This court considered the rival submission made by the parties. In the present case, the suit is filed seeking declaration of status as managing trustee of a temple, which is admittedly a trust property. The defendants themselves have pleaded that the property belongs to Gopalakrishna Devaswom. The plaintiff has valued the

suit invoking the provisions applicable to trust property. Whether the relief claimed falls under the valuation provision invoked by the plaintiff or under any other provision of the Act depends upon the nature of the relief sought and the character of the property involved.

In Roy Michael v. Poorva Realities Pvt. Ltd. [2023 (4) KLT 108], the Hon'ble High Court of Kerala has held that “2.....*A suit either for cancellation of a deed of conveyance of immovable property held in trust or to set aside the same or for a declaration with respect to the title and nature of the property at the instance of beneficiaries would always stand governed by S.28 of the Act and they are liable to pay court fee on the one - fifth of the market value of the property subject to a maximum fee of rupees two hundred or where the property has no market value on rupees one thousand. The beneficiary who came up with a suit in order to get any sale deed or deed of transfer or deed creating any right, title or interest over the property held in trust need not pay court fee for the amount of value incorporated under the document of transfer or based on the value of the property. The maximum court fee that can be payable is rupees two hundred or on rupees one thousand. They are not bound to pay any larger sum by way of court fee since the matter would not come under the purview of either S.25 or S.40 of the Act. In fact, S.28 of*

the Act is a special provision dealing with trust properties. It is really an exception to S.40 of the Act. S.40 would come into play only when there is a suit for setting aside or cancellation of any decree or document which operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest in money, movable or immovable property. The right, title or interest in money, movable or immovable property as made mentioned under that provision should always be read and understood in relation to an existing right, title or interest capable of severance and alienation. In the absence of any such right, title or interest capable of severance or alienation as in the case of a trust property, the parties would stand outside the purview of S.40 of the Act. A suit relating to trust property is an exception and would stand governed by S.28 of the Act and not by S.25 or 40 of the Act, though it involves cancellation of an unauthorized deed of conveyance.”

11. Though the plaintiff has erroneously referred to Section 25(d)(ii) of the Act in the plaint, mere wrong quoting of a statutory provision is not fatal when the court fee paid is otherwise in accordance with law. In **Pruthvirajsinh Nodhubha Jadeja (D) By Lrs v. Jayeshkumar Chhakaddas Shah and Others 2019 KHC 7015, 2019(9)SCC 533** the Hon’ble Supreme Court held that “8. It

is well settled law that mere non - mentioning of an incorrect provision is not fatal to the application if the power to pass such an order is available with the court." In the instant suit, the plaintiff is seeking a declaration that he is the absolute owner as a legal heir and further claiming as a managing trustee of the temple on the strength of gift deed and trust deed. This shows that the plaintiff is seeking relief on the premise that he is the beneficiary out of the gift deed and the trust deed. If that be so, the valuation of the suit and the court fee payable are governed by Section 28 of the Kerala Court Fees and Suits Valuation Act, which is a special provision applicable to suits relating to trust property. Though the plaintiff has referred to Section 25(d)(ii) of the Act in the plaint, but the same is a misquoting of correct provision of law and such incorrect quoting of the provision by ipso facto not disentitle this court to consider the correct provision of law, particularly when this court possess power to consider the same. Though there is a misquoting of the correct provision of law, the court fee remitted by the plaintiff is in accordance with Section 28 of the Act. The same is perfectly legal in the instant suit. In such circumstances, this court has no hesitation to hold that the court fee paid by the plaintiff is correct and sufficient.

12. In view of the above, this Court of the view that there is no necessity to decide the issue of valuation and court fee as a preliminary issue under Section 12(2) of the Kerala Court Fees and Suits Valuation Act. Accordingly, the point No. (i) is found against the petitioner.

In the result, the petition stands dismissed without costs to the respondents.

Dictated to the Confdl.Asst, typed by her corrected and pronounced by me in open Court on this the 27th day of January 2026.

Sd/-
Simi P Siju
Additional Munsiff

Appendix: Nil

Id/-
Additional Munsiff

//True Copy//

Additional Munsiff

ORDER
I.A. No.08/2025 in
O.S. No.444/2014
Dated :27.01.2026