

IN THE COURT OF THE MUNSIFF, PERUMBAVOOR

Present:- Smt. Alshari A., Munsiff

Tuesday, the 5th day of July, 2022/ 14th Ashadha 1944.

O. S. No. 141/2014

Plaintiff:-

Sheeraj Mathew Raju, Aged 24 years, S/o. V. M. Raju, Valiyaparambil House, Poovamthurathu P O, Kottayam District, Agent and Power of Attorney Holder of Sheena, W/o. George, Aged 47 years, Kannankuzhathu House, Perumbavoor Kara, Perumbavoor Village. Now residing at 200 Cross, Creek Dr. Lilburn, GA 30047, U.S.A.

By Adv. C P Mathew

Defendants:-

1. Shajan Pailo Paul, Aged 56 years, S/o. Pailo, Shavilla, Kannankuzhathu House, Perumbavoor Kara, Perumbavoor Village. Now residing at Thiruvizha Group of Housing Society B-605, Flot No.37, Delhi Dwaraka Sector - 10,
2. Shibu P. Paul, Aged 54 years, S/o. Pailo, Shavilla, Kannankuzhathu House, Perumbavoor Kara, Perumbavoor Village. Now residing at N.G.O. Quarters No.11/41, Thrikkakkara P O, Kakkanadu Kara, Vazhakkala Village, Kanayannur Taluk, Cochin – 682010.
3. Kuttiyamma @ Achamma, Aged 84 years, W/o. Late Pailo, Shavilla, Kannankuzhathu House, Perumbavoor Kara, Perumbavoor Village.
4. Sajesh R Nair, Aged 37 years, S/o. Rajappan Nair, Cheladu House, Kodanadu P O, Kodanadu Kara, Kodanadu Village.

Addl. Rajagopal, S/o. Sukumaran, Karthikeyappurathu, 7BH,
D5. Madippakkam Village, Chennai, Tamil Nadu – 600091.

Addl. Suresh, S/o. Achuthan, Nedyara, Perumbavoor.
D6.

Addl. D5 & D6 impleaded as per order dtd 10/10/14 in IA. 1006/14

Addl. Sheela Raju, Aged 57 years, W/o. V M Raju, Valiyaparambil
D7. House, Poovamthuruthu P O, Panachikkadu Village, Kottayam.

Addl. Sherly Mathew, W/o. Mathew, Konathettu House,
D8. Neendoor, Kottayam.

Addl. D7 and 8 impleaded as per order dtd 16/09/14 in IA. 2046/14.

D1 & D3	-	Exparte
D2	-	By Adv. P T Geevarghese
D4	-	By Adv. A R Bejoy
Addl. D5	-	By Adv. Bindu P Nair
Addl. D6	-	By Adv. G. Santhosh Kumar
Addl.D7 & D8	-	By Adv. Ambily V A

This suit having been finally heard on 01/07/2022 and the court on 05/07/2022 delivered the following:-

ORDER

1. **Plaint averments in brief:-** The plaint schedule property originally belonged to deceased pailou by virtue of document bearing No.1950/1964. After alienation, the property having a an extent of 36 and half cents remained in the possession of the said Pailou who executed a will in favour of this plaintiff. As per the stipulation in the will, after the death of said Pailou, the property devolved upon this plaintiff. 3rd defendant have no right over the property, but only a limit right to reside in the property reserved in favour of the 3rd defendant as per the will during the life time of Pailou. The 1st and 2nd defendant ignored her and also did not look after her. By inducing the 3rd defendant, a document was forged in favour of the 3rd defendant, bearing no. 5831/2003, the said document is abinitio void. On the strength of the said document, another document as 5832/2003 pertaining to 11 cent 370 square links and a document bearing no. 336/2006 by virtue of this forged and fabricated document was

got executed by which the defendants grabbed property belong to the plaintiff. The 3rd defendant have no authority or right to execute the above documents. Subsequently, a document was executed by the 4th defendant as 1040/2007 and he also is trying to further alienate the property. Hence, the suit.

2. The defendants 1 and 3 had filed written statement by denying the plaint averments. The suit is not maintainable either in law or on facts. The suit is filed without any bonafides intended to harass the defendants and to grab undeserved profit. The relationship in between the parties are admitted. Sheeraj Mathew Raju have no right to file a suit for and on behalf of Sheena George. Sheena George is residing at America permanently. Power of attorney is not seen produced along with the suit. The father of the 1st defendant and the husband of the 3rd defendant Sri. Pailo had executed a Will bearing No. 14/1993 of SRO, Perumbavoor. The said Will was cancelled. It is admitted that a Will bearing No. 5/1995 of SRO, Perumbavoor was executed. During the marriage of Sheela and Sherly, the deceased Pailo during his life time had given the amounts as their share during their marriage. The marriage of Sherly was solemnized by using the amount obtained by selling the property which belonged to the Pailo. The Sheena also was given the property during the life time of the said Pailo, for the remaining properties he had executed a Will. The Will bearing No. 5/1995 is admitted to be the last Will of the said Pailo. As per the Will, the property having an extra of 36½ cents were who was bequeathed in favour of the plaintiff as stated in the plaint is not correct. As pert the stipulation of the Will, no property was bequeathed in favour of the plaintiff. The property was bequeathed in favour of the 3rd defendant which is known to the said Sheena also. The 3rd defendant had executed the document in favour of the 1st and 2nd defendants by virtue of the document bearing no. 5831/2003 and 5832/2003. The property which was assigned in favour of Sheena, the

property demarcated as way and the property which was assigned in favour of the 1st and 2nd defendants were measured in the presence of Sheena. On those occasions, the said Sheena had not raised any dispute regarding the documents executed in favour of the defendants. As per the stipulations in the Will deed, the 3rd defendant was having the absolute right over the property, there is absolutely no stipulation regarding any right which is so bequeathed in favour of Sheena as stated in the plaint and the plaint averments to that effect is not true. During the life time of 3rd defendant, she was having absolute right to create the documents and to receive the consideration for the same. As per the stipulations in the Will, no absolute ownership devolves upon the Sheena directly. After the demise of the Pailo, the Will came into effect. The 3rd defendant vested with absolute ownership over the property, when the Will came into effect on the demise of said Pailo. The 3rd defendant assigned the property in favour of the 1st and 2nd defendants by virtue of the documents bearing No. 5831/2003 and 5832/2003 on receiving adequate consideration. Subsequently, the property remained with the 3rd defendant was also purchased by the 1st defendant for adequate consideration. The 2nd defendant had alienated the property to third parties. There is no property remaining which was in the ownership of the 3rd defendant. The properties are not valued on the basis of the value shown in the document which are sought to be declared void and also on the basis of the market value. The value shown in the documents and the market value of the property has to be considered for the valuation of the suit and the plaintiff is liable to pay the court fees as per the valuation. During the life time of the 3rd defendant, the said Sheena is not having any right over the property as per the stipulation in the Will. The sale deed executed in favour of the 1st and 2nd defendants by the 3rd defendant came into effect and there is no basis for the allegation that the said documents are void.

The property assigned in favour of the 2nd defendant was alienated to the 4th defendant. The 1st defendant is intending to sell the property so as to raise amount for his business purpose and he had intimated his siblings that he is ready to sell the property to them, and if they are not willing he shall alienate the same to the 3rd parties. The suit is filed only to grab the money from the 1st defendant with malafides. No fabricated documents were created. The suit is a premature one. The 1st defendant is having the absolute ownership over the property. The property which was assigned in favour of the 2nd defendant is now alienated to the 3rd parties. The 1st defendant is having every right to sell his property. The plaintiff is not entitled for any relief as sought for. Hence, the suit is to be dismissed with the costs of these defendants.

3. The 5th defendant had also filed written statement with the same contentions that are raised by the 1st and 3rd defendants. The Will bearing No. 5/1995 was admitted. As per the stipulations in the Will the property devolved upon the 3rd defendant as per the stipulations of the Will. The Will came into effect after the demise of the Pailo. The 3rd defendant who had absolute ownership over the property during his life time had executed documents in favour of the 1st and 2nd defendants. The 2nd defendant had the property assigned to him to 3rd parties. The plaintiff was well aware of the document bearing No. 55831, 5832 and 336 and the subsequent documents executed subsequent to the execution of those documents. Hence, the suit is barred by limitation. The defendant had not created any false document. The property belonged to the 2nd defendant was alienated to 3rd party 4th defendant later to the 5th and 6th defendants had purchased the property, by virtue of the documents bearing No. 8124/2008 and 8125/2008. Subsequently, the property purchased by the 6th defendant was assigned in favour of the 5th defendant as per the document bearing No. 1631/2009. The valuation shown in the plaint is not correct and the plaintiff is

liable to pay the sufficient court fee by valuing the property on the basis of the value shown in the document and the market value. Hence, the suit is to be dismissed with costs of this defendant.

4. After the amendment of the suit, the defendants 1 and 3 had filed additional written statement by stating that the additional prayer amended is barred by limitation. The court fee calculated is not correct. The plaintiff is liable to pay court fee and Article 40 of the Kerala Court Fees and Suits Valuation Act, as per Ad Valorem court fees. It is so reported in the decision of Hon'ble Apex Court in AIR 2010 SC 2777. The suit has to be valued on the basis of value shown in the documents which is not done. So, the entire consideration paid as per the said sale deeds as per Ad Valorem court fee is to be remitted.
5. The 5th defendant had also filed additional written statement by stating that the court fee calculated is not correct. The plaintiff is liable to pay the court fee on valuation of the value shown in the documents. Since the court fee paid is not correct the suit is to be dismissed. The valuation shown in the plaint is without any basis. Hence, the suit is to be dismissed.
6. On the basis of the pleading a preliminary issue was raised as follows:-

Whether the court fee is remitted sufficient?
7. As per the plaint, the plaintiff is seeking for declaring the document bearing No. 5832/2003, 336/2006, 5831/2003, 1040/2007, 8124/2009, 8125/2009, 1631/2009 are declared to be void and not binding upon the plaint schedule property. The learned counsel for the plaintiff argued that the declaration sought for is only to the effect that the documents are not binding upon the plaintiff or the plaint schedule property and there is no relief of declaration sought for, for the cancellation the documents, or to declare as void.

8. On going through the prayer in the plaint it can be seen that the declaration is sought for double folded to declare the documents to be void and not binding upon the plaint schedule properties. So the relief of declaration as sought for the plaint as per the prayer includes the documents to be declared as void. As per the Kerala Court Fees and Suit Valuation Act Sec. 25 if it is a declaration and for possession pertaining to property then fees shall be computed on the market value of the property or on Rs.1000/- which ever is higher. In this case, there is no relief sought for the possession of the property. Hence, clause (a) is not applicable herein. When considering the clause (b) in a case of declaration and for consequential injunction with reference to any immovable properties, fee shall be computed on one half of the market value of the property or on Rs.1000/- which ever is higher, which is applicable in this case. The declaration sought for here in is to declare the documents void and not binding upon the plaint schedule property which refers to immovable property and the matter in adjudication are upon the rights of the parties upon the immovable property based on the validity of the documents sought to be declared as void. In such a case, it can only be seen that the plaintiff is liable to pay court fee under Section 25 (b) of the Kerala Court Fees and Suit Valuation Act, 1919.
9. The learned counsel for defendant invited my attention to the decision of Hon'ble Apex Court in *Satheedevi v. Prasanna and another* (AIR 2010 SC 2872) and argued that in this case section 40 is applicable and not section 25 of the Kerala Court Fees and Suit Valuation Act. On going through the prayer in suit, the suit is one filed seeking the relief of declaration and not any cancellation of any document. Hence, I could not find the decision of Hon'ble Apex court above stated to be applicable in this case.

10. On the perusal of records, it is seen that the subject matter of the suit is a property having an extend of 36 ½ cents which includes a building situated therein. Suit is valued on the basis of the market value, as pr section 25 of the Act. The market value is shown as the ten times the gross annual income derived from the property as 50,000/-. As per section 7 of the Kerala Court Fees and Suit Valuation Act, the market value is to be determined to be ten times the annual gross profits of such land where it is capable of yielding annual profits, if the property is an agricultural land. On going through the plaint schedule, the property is not referred to as any agricultural land but land which includes a building therein. So clause (2) to section 7 cannot be found to be applicable for determining the market value of the plaint schedule property. Clause (3) to section 7 of Kerala Court Fees and Suit Valuation Act also does not apply since the plaint schedule property is not a building but landed property through includes a building therein. On going through the valuation portion, there is no reference to any rental value. The plaintiff have no case the building in the property is rented out or so on the other hand, the averments in the plaint would go to show that the building in the plaint schedule property was used for residential purpose and according to plaintiff, a right to reside in the building situated in the plaint schedule property was reserved in favour of the plaintiff's mother, by his father, as per will, on the strength of which the plaintiff claims right over the property. So, the averments would clearly go to show that the property is neither an agricultural land nor a building. So clause (2) & (3) of Section 7 of the Kerala Court Fees and Suit Valuation Act is not applicable herein, for determining the market value of the subject matter of the suit. In such a case clause 3 (A) to Section 7 is applicable for determining the market value of the plaint schedule property. On the perusal of plaint, it can be seen the market value is assessed

as per section 7 (2) of the Act which is not applicable in view of the above discussions. The market value of the property shall be the value it will fetch on the date of institution of the suit as per Section 7 (3A) of the Act. But there is no reference to the value of property it will fetch on the date of institution of the suit in the plaint. In the said scenario, I could not find the valuation of the plaint and the court fee remitted to be sufficient. Plaintiff is directed to take appropriate steps to determine the market value of the plaint schedule property as per Section 7 (3A) of the Kerala Court Fees and Suit Valuation Act, to have proper valuation of the suit and to remit the sufficient court fee accordingly. This issue is found against the plaintiff.

11. In the result, the preliminary issue is found against the plaintiff.

Dictated to the confdl. asstt., transcribed and typed by her, corrected and pronounced by me in open court on this the 5th day of July, 2022.

Sd/-
ALSHARI A.
MUNSIFF

Appendix: Nil

Id/-
Munsiff
(By Order)

// True copy //

Junior Superintendent

Typed by: jav
Compd.by :

Copy of Order
in
O.S. No. 141/2014
Dated : 05/07/2022