

IN THE COURT OF THE SUB JUDGE, MUVATTUPUZHA

Present:- Sri. Aravind B. Edayodi, Sub Judge

Tuesday, the 11th day of October 2022/19th Aswina 1944

I.A. No. 10/2022 in O.S. No. 13/2021

Petitioners/Plaintiffs :

1. K.P. Shefeekah @ Shefeekath Rahman, aged 38 years, W/o Sajeev, residing at Puthenveedu, Pezhakappilly P.O, Muvattupuzha-686673.
2. Fathimathulkamila @ Kamila, aged 33 years, W/o Zakkariya Moulvi, C/o Muhammed, Mangalathu parambil, Pallarimangalam P.O, Ernakulam-686671.
3. K.P. Saheeda @ Saheeda P.P, aged 43 years, W/o Muhammed Theyeeb, Karingarayil House, Kalammassery, Toshiba P.O, Ernakulam

By Advs. M/s. K A Jaleel & Sheela V

Respondents/Defendants:

1. K.F Muhammed Aslam @ Aslam Moulavi, aged about 51 years, S/o late K.M, Fareedudheen Moulavi, Kalluvettikkuzhi, Pezhakappilly P.O, Muvattupuzha-686673.
2. K.F Rahmathullah @ Rahmathulla Moulavi, aged about 48 years, S/o late K.M Fareedudheen Moulavi, Kalluvettikkuzhi, Pezhakappilly P.O, Muvattupuzha-686673.
3. K.P Abdul Salam @ Abdussalam Moulavi, aged about 46 years, S/o late Fareedudheen Moulavi, Kalluvettikkuzhi, Pezhakappilly P.O, Muvattupuzha-686673.
4. K.P Muhammed Thoufeeque @ Muhammed Thoufeeque Moulavi, aged 41 years, S/o late K.M Fareedudheen Moulavi, Kalluvettikkuzhi, Pezhakappilly P.O, Muvattupuzha-686673.
5. K.P Naseema, aged about 56 years, W/o Abdul Kahder, Mulakkakkudi house, Cheruvattoor Kara, Iramalloor Village, Nellikuzhy P.O, Kothamangalam Taluk, Ernakulam District.
6. K.P Ramla, aged about 52 years, W/o K.M Syed Mohammed Maulavi, Kallumpurath House, Koovallor kara, Kuttamangalam Village, Koovallor P.O, Kothamangalam taluk, Ernakulam District.

R1, R2, R5 By Adv. Sri. C Harindramohan Nair
R3, R4 By Adv. M/s. C Harindramohan Nair & Gigi Peter
R6 No vakalath

This petition is filed under Section 151 of the CPC to direct the respondents/defendants to deposit into court 3 shares from out of 13 shares of the total income admittedly received by the defendants from the plaint schedule property for the immediately past three years from the date of filing of the suit, to pay arrears from the date of filing to this day and thereafter, continue to pay the admitted monthly rent until the conclusion of the proceedings within 5 days from the date of receipt of such monthly rental income.

The petition coming on for final hearing on 29.09.2022 in the presence of above counsel and the court on this day passed the following order:-

ORDER

This is a petition filed by plaintiffs/petitioners, under Section 151 of the Code of Civil Procedure, directing the respondents/defendants to deposit the admitted shares of rent due to petitioners from the plaint schedule property.

2. According to plaintiffs, defendants admitted that they are jointly entitled to 3/13 shares of rental income deriving from 18 rooms situated in plaint schedule property.

Defendants also admitted that present monthly rental income from the above rooms is ₹90,000/-.

3. In the above circumstance, plaintiffs sought for an order directing the defendants/respondents to deposit 3/13 shares of rental income from plaint schedule shop rooms entitled to the petitioners, for the last three years, from the date of institution of the suit till date, and thereafter within five days from the date of receipt of the income before the court.

4. Respondents/defendants 1 to 4 filed objection stating that plaintiffs did not admit the monthly income stated by defendants. The claim of plaintiffs for 1/13 share is not sustainable. The plaintiffs and defendants 5 and 6 are entitled to only 17/273 shares each. Plaintiffs and defendants 5 and 6 received their share of rent at the above proportion, till February 2021 on the basis of stipulations in the 'Karar No.801/2021 mentioned in the written statement. About 2 years back, an amount of not less than ₹3,00,000/- was spent for periodical repairs of the building. The 4th defendant who is at presently managing the disputed properties demanded the share from plaintiffs and defendants 5 and 6. The plaintiffs were not ready; and they instituted the suit. Plaintiffs are not entitled to any arrears

as claimed. No relief is claimed regarding future rent as it is not a petition under Rent control Act. The relief is not maintainable. Before final adjudication, a party cannot be directed to pay any amount to another party, as it depends upon the final verdict in the suit. In the above circumstance, petition is liable to be dismissed.

5. Other respondents not filed objection.

6. Heard both sides.

7. Now the point that arose for consideration is:

Are petitioners/plaintiffs entitled to an order, as that sought for?

8. In the written statement defendants 1 to 4, admitted that plaintiffs and defendants 1 to 4, are jointly entitled to plaint schedule property and plaintiffs and defendants 5 and 6 have $\frac{1}{13}$ shares each and defendants 1 to 4 have $\frac{2}{13}$ shares each over the $\frac{4}{21}$ share of the father and mother, in plaint schedule properties. Besides the plaintiffs and defendants 5 and 6 have got $\frac{1}{21}$ share each and defendants 1 to 4 have $\frac{3}{21}$ share each over plaint schedule properties and its income. Thus the plaintiffs and defendants 5 and 6 have got $\frac{17}{273}$ shares each and

defendants 1 to 4 have got 47/273 shares each over plaint schedule properties (para 8, of written statement).

9. Defendants also admitted that presently an amount of ₹90,000/- is being collected towards monthly rent (para 7, of written statement). Defendants also pleaded that about two years back an amount not less than ₹3,00,000/- was spent towards periodical repairs and maintenance of the building complex and the 4th defendant demanded a share of that expenditure from the plaintiffs and they did not relish it and demanded partition and filed the suit suppressing material facts. Defendants further pleaded that plaintiffs were paid their share of rent till February 2021, till they refused to accept it. (page No.3, of written statement).

10. From the above pleadings, defendants 1 to 4 admitted that plaintiffs are entitled to 17/273 share each over the income for plaint schedule property. It is also admitted that there is rental income at the rate of ₹90,000/- per month. Defendants contended that they could not pay the monthly income entitled to the plaintiffs as plaintiffs refused to receive. In this case plaintiffs filed the suit for partition and for share of profits.

11. In the above circumstance, there is no ground to deny the relief sought by plaintiffs on the basis of admission .

In the result, I find the point partly in favour of plaintiffs. Defendants 1 to 4 are directed to deposit the admitted shares of rent entitled to plaintiffs, at the rate of 17/273 shares each, for the admitted monthly rent of ₹90,000/-, for the last three years from the date of suit and in future, deducting the claimed expense of ₹3,00,000/- as stated in the written statement and also deducting the claimed payment. Defendants are further directed to deposit future share of rent entitled to plaintiffs, within five days from the date of receipt.

Dictated to the Confidential Assistant, typed by her directly into computer, corrected by me and pronounced in the Open Court on this the 11th day of October 2022.

Sd/-
Aravind B. Edayodi
Sub Judge

Appendix : Nil

Id/-
Sub Judge

//True Copy//

(By Order)

Sheristadar

Copied by : stn/-
Compd by: svb/-

Copy of Order in
I.A. No. 10/2022
in O.S. 13/2021
Dated : 11.10.2022