

IN THE COURT OF THE SUB JUDGE, MUVATTUPUZHA

Present:- Sri. Aravind B. Edayodi, Sub Judge
Friday, the 25th day of August 2023/03rd Bhadrapada 1945

I.A. 10/2023 in O.S No. 82/2020**Petitioner/5th Defendant:-**

C I Varghese, aged 54 years, S/o Ittiyavira, Chundattu House,
Venduvazhy Kara, Kothamangalam Village.

By Advs. Sherman A George & Ruby Anna Mathew

Respondents/Plaintiffs/Defendants 1 to 4:-

1. Shibu George, S/o N C George, Nadokudiyil, Kuroor Kara, Kothamangalam, now residing at Ayayakkadu kara, Thrikkariyoor village, Kothamangalam
2. Shency Anil, Anikkattu house, Marady Village.
3. Shiji George, W/o late Proff. P J George, Karingazha Kara, Chelad post, Kothamangalam.
4. Shibi Saju, Chakkalackal house, East Kadathy, Market P O, Velloorkunnam.
5. Shobu George, S/o N C George, Nadukudiyil, Kuroor kara, Kothamangalam.
6. Kunjamma George, W/o late N C George, Nadukudiyil house, Kuroor Kara, Kothamangalam.
7. Eldhose Shobu, Minor, aged 5 years, S/o Sobu, Nadukudiyil, Kuroor kara, Kothamanglam, rep. by his father and natural guardian Mr. Shobu.
8. Anie Shobu, W/o Shobu, Nadukudiyil, Kuroor kara, Kothamanglam

R1 to 4 By Advs. Pradeep R & Jijo Joseph

R5 to 8 By Advs. P M Rafeek & P M Riyas

The petition is filed under Order 14 Rule 2(b) and Order 7 Rule 11(b) of the CPC 1908 and Section 12(2) of the Kerala Court Fees and Suit Valuation Act, 1959 to frame the issue regarding the want of court fee as a preliminary issue and same may be heard.

The petition coming on for final hearing on 17th day of August 2023 and the Court on this day passed the following:-

ORDER

This is a petition filed by the 5th defendant under Order 14 Rule 2(b) and Order 7 Rule 11(b) of the Code of Civil Procedure and Section 12(2) of the Kerala Court Fees and Suit Valuation Act, for framing an issue regarding want of court fee as a preliminary issue.

2. According to the petitioner, in the suit filed by the plaintiffs for partition, they sought for declaration of their purported 2/15th shares in plaint B schedule property without valuing the relief, though the above relief sought as the main relief. According to the petitioner the above relief is to be value based on the market value of the property seeking partition under S.25(d)(i) of the Kerala Court fees and suit Valuation Act,1959.

3. The possession of 6th item of plaint B schedule property was transferred to the petitioner by M.C.George, who is the father of plaintiffs/respondents 1 to 4 on the basis of an agreement for sale dated 27.10.2017 and in the agreement parting of possession in favour of the petitioner was specifically stated. The mutation with respect to the aforesaid property was effected in the name of the petitioner. The exclusive possession of item No.6 of plaint B schedule property came to the petitioner and plaintiffs are not in joint possession of the above property. Hence the relief is to be valued under Section 37(2) of the Kerala Court Fees and Suit Valuation Act.

4. Valuing B relief as ₹1000/- is incorrect which is to be done on the basis of market value under Section 25(d)(i) instead 25(d)(ii) of the Kerala court Fees and Suit Valuation Act.

5. Respondents 1 to 4/plaintiffs filed objection denying the contentions raised by the petitioner.

6. Heard both sides.

7. Plaintiffs sought for partition of plaint schedule property as the persons in de jure possession. Hence the contention of the petitioner – the issue - Whether the suit is instituted without proper payment of court fee? is to be framed as preliminary issue, is not sustainable as the issue involves mixed question of law and facts.

8. Just because that plaintiffs sought for a declaration regarding their right in the co-ownership property in a suit for partition, by paying fixed court fee, it could not be said that the relief A is not properly valued. How the relief B is to be valued is an issue involving mixed question of law and facts which could be decided only after trial. Hence petitioner is not entitled to hear and decide the issue regarding court fee as a preliminary issue, though it is proper to frame an issue - Is the court fee paid for the reliefs insufficient?

In the result, petition is dismissed though an additional issue is to be framed as issue No.10 - Is the court fee paid for the reliefs insufficient?

Dictated to the Confidential Assistant, typed by her directly into computer, corrected by me and pronounced in the Open Court on this the 25th day of August 2023.

Sd/-
Aravind B. Edayodi
Sub Judge

Appendix : Nil

Id/-
Sub Judge

//True Copy//

(By Order)

Sheristadar

Copied by: stn/-
Comp. by : svb/-

Copy of Order in
I.A. 10/2023 in
O.S. 82/2020
Dated: 25.08.2023