

IN THE COURT OF THE CIVIL JUDGE (SENIOR DIVISION),MUVATTUPUZHA

Present:- Sri. Atheek Rahman, Civil Judge (Senior Division)

Thursday, the 10th day of October, 2024 / 18th Ashwina 1946

I.A.No. 14/2024 in O.S No.82/2020

Petitioner/Defendant No.1 to 4:-

- 1 Shobu George, S/o N.C. George, aged 47 years,
Nadukudiyil, Kuroor Kara, Kothamangalam Village.
- 2 Kunjamma George, W/o late N.C George, aged 74 years,
Nadukudiyil House, Kuroor Kara, Kothamangalam Village.
- 3 Eldho Shobu, Minor, S/o Shobu Goerge, Nadukudiyil,
Kuroor Kara, Kothamangalam Village represented by
his father and natural guardian Mr.Shobu George,
S/o N.C George, aged 47 years, Nadukudiyil,
Kuroor Kara, Kothamangalam Village.
- 4 Anie Shobu, W/o Shobu, aged 42 years,
Nadukudiyil, Kuroor Kara, Kothamangalam Village.

By Advs. P.M.Rafeek & P.M.Riyas

Respondents/Plaintiffs/defendant No.5:-

- 1 Shibu George, N.C. George, aged 53 years,
Nadukudiyil, Kuroor Kara, Kothamangalam Village.
Now residing at Ayyakkadu Kara,
Thrikkariyoor Village, Kothamangalam- 686692.
- 2 Shency Anil, W/o Anil, aged 56 years, Anikkattu House,
Marady Village, South Marady Post, Mancherippadi,
Muvattupuzha Taluk - 6886673
- 3 Shiji George. W/o Late Prof.P.J George, aged 55 years,
Karingazha Kara, Chelad Post, Kothamangalam Village,
Kothamangalam Taluk – 686681.
- 4 Shibi Saju, W/o Saju, aged 50 years, Chakkalackal House,
East Kadathy, Market Post, Velloorkunnam Village,
Muvattupuzha Taluk – 686673.

I.A.14/2024
O.S.No.82/2020

5 C.I Varghese, aged 57 years, Chundattu House,
Venduvazhi Post now residing near Kala Auditorium,
Kothamangalam, Kothamangalam Taluk.

R1 to R4 – By Adv.Pradeep R & Jijo Joseph

R5 – By Adv. Sherman A George & Ruby Anna Mathew

This petition is filed under Order VII Rule 11 Read With
Section 151 of the code of Civil Procedure, and is coming on for final
hearing on 10.10.2024 in the presence of the plaintiff counsel and the
Court on the 17th day of October passed the following:-

ORDER

This petition is filed by the petitioners/defendants 1 to 4 under
Order VII Rule 11 and Section 151 of the Code of Civil Procedure to
reject the suit as it is not properly valued and the proper court fee is not
paid. The petition is supported by an affidavit sworn by the 1st petitioner/1st
defendant.

2. Brief averments in the affidavit in support of the petition
are as follows: Suit is for declaration and partition. The petitioners filed
written statement. The father of the plaintiff and the 1st defendant executed

I.A.14/2024
O.S.No.82/2020

settlement deed Nos. 4163/2017 and 2482/2018 of SRO Kothamangalam, and Will No.122/II/17 of SRO Kothamangalam with respect to the plaint schedule property. The 'B' relief of declaration is sought in the plaint as an incidental relief to 'A' relief of partition. The 'B' relief is an independent prayer and it is not an independent or ancillary prayer. So, the plaintiff shall pay court fee under Section 40 of the Kerala Court Fees and Suits Valuation Act for 'B' relief. Hence, the petition.

3. Respondent/plaintiff filed counter affidavit stating that the petition is not maintainable either in law or on facts. The contention that B relief is not an incidental relief and the plaint is not properly valued and the proper court fee is not paid is not correct. If the petition is allowed the respondent will be put to irreparable injury and hardship. The petition is devoid of merit and filed only to protract the matter. Hence, the respondent prayed to dismiss the petition.

4. Both sides were heard.

5. The learned counsel for petitioners argued that the 'B' relief in the plaint is not an incidental relief and the plaintiff has to

I.A.14/2024
O.S.No.82/2020

properly value the plaint and the proper court fees is to be paid under Section 40 of the Kerala Court Fees and Suits Valuation Act, 1959.

6. Refuting the contention of the learned counsel for the petitioners, the learned counsel for the respondent relied on the decision in *Sankaran v Velukutty;1986 KHC 196* and *Sangeeth M.S and Others v. Sujatha; MANU/KE/1188/2022*, and argued that even though there is prayer for declaration that the documents are invalid and not binding on the plaintiff, there is no need to pay separate court fee for 'B' relief since it is purely an incidental relief. The 'A' relief in the suit is for partition of the plaint schedule property and 'B' relief is sought incidentally to declare that settlement deed Nos. 4163/17 and 2482/2018 and Will No.122/2018 of SRO Kothamangalam are void, invalid and inoperative; submits the learned counsel for respondent. Furthermore, he submitted that even ignoring the said documents, the plaintiff can maintain a simple suit for partition.

7. The plaintiff paid Court fee under Section 37(2) of the Kerala Court fees and Suits Valuation Act, 1959.

I.A.14/2024
O.S.No.82/2020

8. In *Sankaran v. Velukkutty* (supra) the Hon'ble High Court of Kerala considered the question that whether in a suit for partition separate court fee is necessary for the prayer for declaration that a settlement deed is invalid and not binding on the revision petitioner or the plaintiff schedule properties. The Hon'ble High Court held that even though there is a prayer for declaration that the settlement deed is invalid and not binding on the plaintiff, he cannot be called upon to pay court fees as it is purely incidental. The said ratio is also followed in *Sangeeth M.S and Others v. Sujatha* (supra).

9. I have gone through the pleadings in the plaint. The respondent is seeking partition of the plaintiff schedule property. The relief of partition is the main relief in the suit. The respondent sought the relief of declaration as incidental relief. As far as the facts involved in this case are concerned, the above decisions of the Hon'ble High Court would squarely apply and the contention raised by the petitioners have no due force.

I.A.14/2024
O.S.No.82/2020

Therefore, the petition fails and is accordingly dismissed. No costs.

Dictated to the Confidential Assistant, typed by her directly, corrected by me and pronounced in the Open Court on this the 17th day of October 2024.

Sd/-
ATHEEK RAHMAN
CIVIL JUDGE(SENIOR DIVISION)

APPENDIX :- Nil

Sd/-
CIVIL JUDGE(SENIOR DIVISION)

Typed by : Ss/-
Compd by : Bkv/-

// True Copy //

(By Order)

Sheristadar

I.A.14/2024
O.S.No.82/2020

Copy of Order

in I.A. 14/2024

in O.S. 82/2020

Dated: 17.10.2024