IN THE COURT OF MUNSIFF, THIRUVALLA

Present:-Sri. Aravind.S.J, Munsiff.

Tuesday the 07th day of April 2026/ 17th day of Chaitram 1948 SE.

IA 05/2026 in OS 263/2020

BETWEEN

Ninan.K.Iype, S/o Iype.K.Ninan, Kovoor Vaipur House, Vengal Muriyil, Alamthuruthi P.O, Kavumbhagom Village, Thiruvalla Taluk.	Petitioner Plaintiff

(By Adv. V.Jinachandran)

AND

1. David Kurian, Purackal House, Vettiyakonam Muri, Mepral P.O, Peringara Village, Thiruvalla 2. Omana.V.A, W/o David Kurian, Purackal House, Vettiyakonam Muri, Mepral P.O, Peringara Village, Thiruvalla	Respondents Defendants

(Adv. Alex.P.Chacko, Adv. Thomas Jacob, Adv. Joseph.K)

This petition is filed under order 6 Rule 17 of the Code of Civil Procedure.

This petition has been taken in to consideration on 07.04.2026 and on the same day the court passed the following:-

ORDER

The afore-numbered petition is filed under O. VI Rule 17 of the Code of Civil Procedure for amending the plaint.

2. The petition averments in brief are as follows: The petitioner is the plaintiff in the suit. The plaint was amended as per the direction of the Senior Counsel for the petitioner. The court fee was also incorporated as per his direction. However only when the trial commenced, could the petitioner

understand that the court fee is to be paid under Section 42 of the Kerala Court Fees and Suit Valuation Act for the amended relief. Hence the appropriate court fee is to be paid and necessary averments in that regard is to be made in the plaint. Hence the petition.

3. The respondents filed objection contending as follows: The petition is not maintainable either under law or on facts. The present case is tried jointly with OS No. 375/2001 and the dispute in both the cases are regarding the validity of Sale deed No. 2693/2019 of the Thiruvalla SRO. The trial of the suit commenced on 18.03.2026 and the petitioner was already examined. Thus the present petition filed after the commencement of the trial is not maintainable. The Amendment sought for is not based on any subsequent event or incident. The above application to amend the suit would result in splitting the trial of the cases and the present case would have to be returned for presentation before the Sub-Court, Thiruvalla. The amendment is further calculated to cause the evidence adduced in the above suit to be discarded for want of pecuniary jurisdiction. The proposed amendment, if allowed, could result in de novo trials. As the trial has already commenced and substantial part of the evidence has come on record, de novo trial of the suit is impermissible. The affidavit in support of the above application does not disclose that the petitioner could have made the amendment much prior to the commencement of the trial. The suit is filed for declaration that sale deed No. 2693/2019 of the Thiruvalla SRO executed by the petitioner in favour of the 2nd respondent is a sham document. The plaintiff's title to the suit property is implicit in the said relief. Therefore the relief of mandatory injunction/specific performance sought through the amendment is extraneous and irrelevant to the suit. The proposed amendment

would change the nature and character of the suit and the relief sought is barred by limitation. Hence the petition is liable to be dismissed.

4. Heard both sides in detail. Perused the records.

5. From the above petition averments and contentions, the following points arises for consideration.

i. Whether the prayer of the petitioner to amend the plaint is allowable?

ii. Relief and costs?

6. **<u>Point No 1:</u>** The suit was originally filed by the plaintiff to declare sale deed No. 2693/2019 of the Thiruvalla SRO as a sham document and not binding on the plaintiff or the plaint schedule property. Later the plaint was amended as per the order in IA No. 9/2021 to incorporate the pleading that the said deed was executed only as a security for obtaining an amount of ₹ 68,61,000/- and that there was an agreement to reconvey the property on payment of the aforesaid amount with interest. The plaintiff had thus sought for a decree of mandatory injunction to direct the defendants to execute re-conveyance deed with regard to the plaint schedule property after receiving the sum of ₹ 68,61,000/- along with interest.

7. It is well settled that the pleadings must be read as a whole and the reliefs also must be read in consonance with the pleadings in the plaint. The pleadings in the plaint when read as a whole would leave no room for doubt that the relief sought is one of specific performance even though the same is couched in the nature of a mandatory injunction. Thus, the court fee to be paid is under s. 42 of the Kerala Court Fees and Suit Valuation Act. The plaintiffs had paid court fee only for the relief of mandatory injunction. However, it is now well settled that the court is well within its jurisdiction to consider the plaint as a

whole and to direct the plaintiff to pay appropriate court relief after considering the pleadings and the nature of relief sought for.

8. The only relief sought for in the present petition is to correct the portion regarding the payment of court fee and seeking to pay the appropriate court fee. No amendment is sought for with regard to any other pleading in the plaint. It is also pertinent to consider that the respondents had filed IA No. 7/2021 for determining the correctness of the valuation and the court fee payable by the plaintiff. The respondents had thereafter submitted that the said petition can be posted along with the suit and thus the said IA was posted along with the suit. This Court ought to have considered the said petition before commencement of the trial as the same was required under Section 12(2) of the Kerala Code Fees and Suit Valuation Act, 1959. The same was not done.

9. It is also now well settled that the court has to direct the party to pay the appropriate court fee before proceeding to reject the plaint under Order VII Rule 11 CPC. It is no longer res integra that the power under Order VII Rule 11 can be invoked at any stage even after the commencement of the trial. **(Saleembhai and Others Vs. State of Maharashtra and Others** in (2003) 1 SCC 557). At this juncture, it is pertinent to consider the dictum of the honourable High Court in **Cherootty v. Purushothaman** (2005 (2) KLT 84) wherein it was held that *"The judgment in We-Build Pvt. Ltd. v. Kamaleswaran (1981 KLT 773) is very relevant in this aspect. In paragraphs 14 and 15 of the above judgment the Division Bench held as follows: "14. Even assuming that such a question is an issue framed under O.14, R.1(5), in view of the provision in S.12(2) of the Court Fees Act read with O.7, R.11(b) and (c), it is an issue the finding whereon, may in some cases, if the same is against the plaintiff result in*

the rejection of the plaint and not in the dismissal of the suit, as already stated. Under O.14, R.5 the Court may at any time before passing a decree strike out any issue that may appear to it to be wrongly framed or introduced. An issue, the finding whereon will not be helpful to decide the suit one way or the other, is an unnecessary issue and therefore under O.14, R.5 it can be deleted. Shortly put, the determination of the question of court fees is called for not because such determination is necessary to decide the suit, but to ensure that 'revenue is collected for the benefit of the State' and the Court Fees Act obliges the Court to see to such collection and enables the defendant to assist the Court in that function.

10. In view of what is said above, the Court has to determine the question of correct court fee at the stages stated in the Kerala Court Fees Act, 1959 and in the manner specified therein. Under S.12(2) of that Act, where a defendant raises such a question in the manner mentioned in that provision the Court is required to decide the same before evidence is recorded affecting such defendant on the merits of the claim. A defendant who chooses to assist the Court in the matter of collection of the correct court fees by raising that question, ought also alert the Court of that question raised by him at the proper stage at which the Court is required by the statute to determine it. If he is not prompt in that, it only means that he does not go all the way to assist the Court in determining the correct court fee leviable on the plaint and the Court would be justified in treating such a question as one not arising in the case and in deleting it on that ground." From a reading of the above judgment and the provisions of the Act this Court is of the view that the Court has got an obligation to see that no relief can be granted without any revenue for that and *it is further to hold that the Court has got a duty as cast on it by the provisions of the Act to see that correct court fee should be paid by the parties. There cannot be any escape from court fee. According to this Court, court fee can be determined by the Court at any stage even after the completion of evidence."*

11. The Division Bench of the honourable High Court in **P. P. S. Pillai v. Catholic Syrian Bank** (2000 KHC 691) held that *"Before us learned counsel for the plaintiff contended that neither the Trial Court at the final stage nor the appellate court had jurisdiction to decide that the valuation adopted in the plaint and the court fee paid thereon was not correct. According to counsel once the question of valuation and court fee is omitted to be decided by the Trial Court at the preliminary stage, that court could not again go into that question. Counsel relied on S.12(5) of the Court Fees Act to point out that all questions as to value for the purpose of determination of the jurisdiction of the court arising on the written statement of a defendant shall be heard and decided before evidence is recorded affecting such defendant on the merits of the claim. A literal reading of S.12(5) of the Act appears to suggest that the objection that the question of valuation should be determined first preliminarily, is one available to the defendant and is not one which can be taken advantage of by a plaintiff who had undervalued his plaint. The words "........... before evidence is recorded affecting such defendant on the merits of the claim." (emphasise supplied) indicate this. On the scheme of S.12 with particular reference to sub-s.(2) and (5) of S.12, it appears to us that once a defendant has raised a question of under valuation of the plaint in the written statement originally filed and the court has raised an issue on that question, the defendant can insist that the issue be heard before evidence is taken on merits*

affecting him and the court in that case is obliged to take a decision. It cannot be postulated that merely because the court did not answer the issue preliminarily which had already been raised, it is precluded from answering that issue against the plaintiff at a later stage. Sub-s.(3) of S.12 enabling a newly added defendant to raise the question even if evidence is taken and sub-s. 4 of S.12 which enables the appellate court to consider the correctness of the order passed by the Trial Court affecting the fee payable on the plaint also indicate that the Trial Court continues to have jurisdiction to decide the question whether the plaintiff has properly valued the suit. It is true that in We - Build Pvt. Ltd. v. C. Kamaleswaran (1981 KLT 773) this court has held that if the issue is not decided preliminarily the court could ignore the question as not one arising in the case and in deleting it on that ground. But this court did not say that the court is bound to delete that issue or is incompetent to answer that issue without answering the other issues raised in the case. With respect, we do not consider We - Build Pvt. Ltd. v. C. Kamaleswaran (1981 KLT 773) as authority for the position that once the issue relating to the valuation of the suit is not answered by the Trial Court preliminarily, it is bound to ignore that issue or not to answer that issue at all. The right given to the defendant under S.12(5) of the Act to insist on the issue being heard before evidence is recorded affecting him does not enable a plaintiff who has under valued his suit to contend that once the under valuation has escaped the notice of the court initially, the court cannot thereafter find that the suit is under valued."

12. When the defendants themselves had contented that the court fee paid is not correct and that the suit is in effect one for specific performance in its averments in IA No. 7/2021, this Court is of the opinion that the proper court

fee has to be paid and that the same can be determined by this Court even after the commencement of the trial. Therefore, it cannot be said that the bar under Proviso to Order VI Rule 17 CPC would strictly apply as the same pertains only to the pleadings in the case and every pleading shall contain, and contain only, a statement in a concise form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved. True, the plaint shall also contain a statement of the value of the subject matter of the suit for the purposes of jurisdiction and of court fees, so far as the case admits. However even In the absence of such pleading, the Court is well within its jurisdiction to direct the plaintiff to pay the appropriate court fee in the case.

13. It is true that if the amendment is allowed, it would oust the jurisdiction of this Court and the suit is to be returned for filing before the Hon'ble Sub-Court. It is also true that in such circumstances de novo trial may be warranted. However, the same does not mean that the Court can overlook the question of proper payment of court fee when respondents themselves had contended that the court fee ought to be paid under s. 42 of the Kerala Court Fees and Suit Valuation Act. It is contended by the petitioner that the earlier counsel had advised him to pay the court fee only for mandatory injunction and that the requirement to pay the necessary court fee came to the knowledge of the petitioner only after commencement of trial. The reason stated cannot be said to be malafide as a party may not know the requisite court fee to be paid for the relief claimed. Therefore, this Court is of the opinion that the amendment is liable to be allowed.

14. **Point No. 2**: Based on the discussions in point No. 1, the present

petition is liable to be allowed. The petitioner is directed to carry out amendment within 5 days and produce amended copy of plaint. There is no order as to costs.

Dictated to the Confidential Assistant, transcribed, and typed by her, corrected, and pronounced by me in open court on this the 7th day of March, 2023.

Sd/-
ARAVIND S.J
MUNSIFF.

APPENDIX

NIL

Id/-
MUNSIFF

Carbon Copy of order in IA 05/2026
in OS 263/2020
Dated 07.04.2026