

IN THE COURT OF THE MUNSIFF, KODUNGALLUR.

Present:- Smt.Karthika.K., Munsiff.

Thursday, the 21th day of November, 2024/ 30th Karthikam, 1946.

O.P.2/2023

Petitioner:-

Anandu V Raj, Aged 31 years, S/o.Vayalil Veluthedath
Rajappan, Edavilangu Village and Desom, Kodungallur Taluk.

By Adv. T.K.Prabhakaran

Respondent:-

Abhiram, Aged 20 years, S/o.Payyappilly Babu, Ambalavattam
Desom, Panamanna South Village, Ottappalam Taluk, Palakkad.

Exparte

This petition coming on this day for hearing before me, the court on the same day passed the following:

ORDER

This is a petition filed under Section 83 & 100 of Transfer of Property Act and Section 141 & 151 of the CPC.

2. **The petition averments in brief is as follows:-** The petition schedule property obtained by Smt.Veluthedth Kunjikutty Amma, grand mother of petitioner executed a Will bearing No.9/1973 of SRO, Kodungallur. After the death of Kunjikutty Amma the plaint schedule property obtained by Ammini @ Ammini Amma, D/o Kunjikutty Amma as per the Will and by virtue of joint release deed No.2675/2007 of SRO. Petitioner is the son of Rajappan who is the son of Ammini Amma's sister Saraswathi Amma. The respondent is

the son of Raghi, who is the foster daughter of Ammini Amma. Ammini Amma executed a Will bearing No.139/III/2020 dated 4.11.2020 at her life time. Ammini Amma died on 20.1.2022 without canceling and amending the Will. As per the stipulations in the Will the petitioner had to give an amount of Rs.1,30,000/- to the respondent and receipt has to be obtained. More over it was stipulated in the Will that Lalitha, D/o Aravindakshan(Brother of Ammini Amma) had right to live in the plaint schedule property till her life time. It is also stipulated that only the petitioner had right to possess the petition schedule property. Accordingly after the death of Ammini Amma the petitioner had obtained the petition schedule property. The petitioner was ready to pay an amount of Rs.1,30,000/- to the respondent. But the respondent neither received the amount nor did he issue receipt. Since there is a charge upon the property towards the said amount the petitioner is ready to deposit the amount for the purpose of releasing the charge. For releasing the charge over the petition schedule property this petition is filed.

3. Respondent remained absent and hence he was set ex parte.

4. The petitioner filed proof affidavit and Exts. A1 to A3 documents were marked. Ext.A1 is the original joint release deed No.2675/2007 d of Kodungallur SRO dated 1.6.2007. Ext.A2 is the original Will bearing No.139/III/2020 dated 4.11.2020 executed by

Ammini @ Ammini Amma and Ext.A3 is the death certificate of Ammini Amma issued from Edavilangu Grama Panchayat.

5. In view of the decision rendered by the Hon'ble High Court in Vasanthakumari and others v. Sarojini and others reported in 2008 (1) KLT 451, the petitioners are permitted to make deposit. There is a further direction in the said decision that the petitioners cannot be compelled to indulge in a suit or title or a suit for declaration when according to them, there is no cloud on their title or when they do not want any declaration in respect of their title. More over when a petition of the said nature is filed the only requirement is to ascertain whether the petitioners are liable to pay the amount and whether they are prepared to make the deposit. After the service of the notice to the respondent, the court can allow them to deposit and relegate the parties to agitate all their contentions and the defence in properly constituted a civil suit. The jurisdiction of the court in disposing of such an original petition is only procedural and ministerial fact as held by the Hon'ble Supreme Court in Bishwanath Prasad Sigh v. Rajendra Prasad and another reported in 2006 KHC 608. As per the above decision the court is not expected to decide the dispute between the parties relating to the genuineness or otherwise of the document or the respective rights and liabilities of the parties of the entitlement of any party to receive any amount or as to the

sufficiency of the amount or any other matter which is required to be settled in a properly constituted civil suit. Hence the liability of the petitioner bound under Will No.139/III/2020 of Kodungallur SRO to discharge the liability would come to an end. The charge created is thus lifted. The parties are at liberty to agitate all their contentions and the defence in a properly constituted civil suit.

(Dictated to the Confdl.Asst., transcribed by her, corrected by me and pronounced in open court on this the 21st day of November, 2024)

Sd/-
KARTHIKA.K.,
MUNSIFF.

APPENDIX

Petitioners Exhibits:

- A1 - 01.06.2007- Original Joint Release Deed No.2675/2007
of Kodungallur S.R.O.
- A2 - 04.11.2020- Original Will bearing No.139/III/2020
- A3 - 16.02.2022- Death Certificate of Ammini Amma

Respondent's Exhibits: - Nil.

Petitioners Witness: - Nil.

Respondent's Witness: - Nil.

Copied by: pn

Compared by:

/True Copy/

Id/-
MUNSIFF.
By Order

Junior Superintendent.