

(2015) 07 KL CK 0213
In the High Court Of Kerala
Case No : O.P.(C). No. 1716 of 2015

Moideen Koya

APPELLANT

Vs

Parakulambil Kadeejakutty and Others

RESPONDENT

Date of Decision : 17-07-2015

Acts Referred:

Constitution of India, 1950 — Article 227
Kerala Stamp Act, 1959 — Section 52, 52(c)
Stamp Act, 1899 — Section 54

Citation : AIR 2015 Ker 244 : (2015) 4 ILR Ker 340 : (2015) 4 KHC 74 : (2015) 3 KLJ 499 : (2015) 3 KLT 999

Hon'ble Judges : B. Kemal Pasha, J

Bench : Single Bench

Advocate : Joby Jacob Pulickeekudy and Anil George, for the Appellant

Final Decision : Allowed

Judgement

B. Kemal Pasha, J—Ext. P2 order passed by the Subordinate Judge's Court, Tirur in an unnumbered suit, by which the plaint was ordered to be returned for non-payment of court fee, is under challenge. The suit was filed on 22.06.2015 with court fee stamp for 300 purchased on 05.03.2011. The court below has taken the view that stamps purchased prior to six months from the date of use could not be made use of for the payment of court fee. The court below has relied on Rule 12(g) and Rule 13(1) of the Kerala Court Fees and Suits Valuation (Board of Revenue) Rules, 1960 and also Section 52 of the Kerala Stamp Act, 1959 for taking such a view. It seems that the court below has misread those provisions. Rule 12(g) of the aforesaid Rules says:

"When stamps have been purchased with a bona fide intention to use them and they have not been spoiled or rendered unfit or useless for the purpose intended, but there is no immediate use for them."

2. Rule 13(1) of the aforesaid Rules says:

"Used, damaged or spoiled Court-fee stamps may be renewed on application made within six months after the stamp has been used, damaged or spoiled, and on the delivery of the same:--

(a) by Tahsildar when the value of the stamp does not exceed rupees five hundred.

(b) by the Revenue Divisional Officer when the value of the stamp exceeds rupees five hundred but does not exceed rupees one thousand.

(c) by the Collector irrespective of the value of the stamps whether the stamps were purchased in his District or elsewhere."

3. The said rules do not say that stamps or stamp papers of more than six months old cannot be made use of. Those provisions are intended for refund or for renewal and not for any other purpose.

4. Section 52 of the Kerala Stamp Act, 1959 is *pari materia* to Section 54 of the Indian Stamp Act, 1899. The said provisions in the Indian Stamp Act as well as in the Kerala Stamp Act, 1959 are intended for the refund of value of stamp papers which are not made use of. Section 52(c) of the Kerala Stamp Act, 1959 says:

"That they were so purchased within the period of six months next preceding the date on which they were so delivered."

5. Section 52(c) of the Kerala Stamp Act says that such a person is entitled to refund only if the said stamps were purchased within the period of six months next preceding the date on which they were so delivered. Apart from that, either the Indian Stamp Act, 1899 or the Kerala Stamp Act, 1959 do not say that such stamp papers cannot be made use of. The learned counsel for the petitioner has relied on the decision in *Thiruvengada Pillai Vs. Navaneethammal and Another*, AIR 2008 SC 1541 : (2008) 2 CLT 898 : (2008) 1 CTLJ 324 : (2008) 2 JT 585 : (2008) 2 SCALE 630 : (2008) 4 SCC 530 : (2008) 1 UJ 400 : (2008) AIRSCW 1684 wherein it was clearly held that there is no impediment for a stamp paper purchased more than six months prior to the proposed date of execution, being used for the execution of a document and that the Indian Stamp Act, 1899 nowhere prescribes any expiry date for the use of a stamp paper. The condition prescribed in Section 52(c) of the Kerala Stamp Act, clearly relates to refund of the amount of the stamp and nothing more. The decision in *Thiruvengadam Pillai* (*supra*) was rendered after discussing Section 54 of the Indian Stamp Act. Section 52 of Kerala Stamp Act is *pari materia* to Section 54 of the Indian Stamp Act, 1899. Matters being so, the return of the plaint by the court below has resulted in substantial miscarriage of justice. The party has been unnecessarily driven to this Court to have recourse to Article 227 of the Constitution of India.

In the result, this Original Petition is allowed and the court below is directed to receive the plaint, number it, if it is otherwise valid, and proceed with the suit, in accordance with law.