

(2010) 01 KL CK 0005
In the High Court Of Kerala
Case No : Writ Petition (C) No. 996 of 2010

Padmakumary

APPELLANT

Vs

Lekshmikutty Amma

RESPONDENT

Date of Decision : 18-01-2010

Acts Referred:

Kerala Stamp Act, 1959 — Article 42

Citation : (2010) 2 KLT 554

Hon'ble Judges : S.S. Satheesachandran, J

Bench : Single Bench

Advocate : J. Jayakumar and S. Siji, for the Appellant;

Judgement

S.S. Satheesachandran, J.—The Writ Petition is filed seeking the following reliefs:

- i) Set aside Ext.P2 order passed by the Sub Judge's Court, Attingal.
- ii) Direct the court below to refund the Stamp Duty remitted by the petitioners in their 2/3 share within the time limit fixed by this Hon''ble Court, in the light of Article 42 of Kerala Stamp Act.
- iii) Grant such other relief that this Hon''ble Court deem fit and proper in the circumstances of the case.

2. Challenge raised in the Writ Petition is against Ext.P2 order passed by the learned Sub Judge dismissing an application moved by the petitioners for refund of the court fee, which, according to them, was paid by mistake in respect of the share allotted to them under a compromise decree passed in a suit for partition. The parties entered into a compromise by which petitioners were provided 2/3 of the plaint property and the defendant 1/3 share in that property. Previously compromise petition filed by the parties as indicated above was refused to be accepted by the court holding that the parties have to file a fresh suit to give effect to that compromise. Final decree application was dismissed by the court taking note of the compromise agreement produced by the parties. That order

was challenged before this Court and vide Ext.P1 judgment, setting aside the order of the court below it was directed to reexamine the matter afresh and dispose of the final decree proceedings passing appropriate orders on the compromise petition produced by the parties. Pursuant thereto, it is submitted by the learned Counsel for the petitioner, the court below has passed an "order" but not a judgment accepting the terms of the compromise incorporating the final decree. No direction was also given in the order as to what should be the stamp fee to be paid by the respective sharers/plaintiffs and defendant in the suit. The learned Counsel for the petitioners handed over to me a copy of the order dated 21/08/2009 passed by the court disposing the final decree proceedings. Clearly the court has overlooked the provisions of law which mandate for the passing of a final judgment closing the final decree proceedings. It is also seen that the court has given a go by to Rule 236 of the Civil Rules of Practice which mandates that in a final judgment in a partition suit, direction should be given by the court as to the deposit of the amount required for purchase of the nonjudicial stamp paper to engross the final decree in proportion to the value of their shares stipulating that in the event of default by one or the other party, it may be a charge on the property allotted to the party who tenders the entire amount due for purchasing the stamp paper. However, as the challenge canvassed in the present Writ Petition is confined to the declining of the request made by the petitioners for refund of the amount tendered by them towards purchase of the stamp paper in respect of their 2/3 share, I need not pass any direction with respect to the order passed by the court disposing of the final decree proceedings. It will be open to the petitioners to file a review petition before the court below bringing to its notice the relevant provisions of law mandating the passing of a final judgment complying with the rules. If any such application is filed, the court below shall consider it taking note of the observations made above and dispose it in accordance with law. Petitioners contend that in a partition suit, after a decree is passed, they need only pay the requisite amount for the lesser share allotted in the decree and not in respect of the major share allotted to any of the sharers. The case so canvassed by the petitioners has to be accepted in the light of Article 42 of the Kerala Stamp Act. In the present case, petitioners have been allotted 2/3 share under the compromise entered by the parties, which had been accepted by the court, and the respondent, 1/3 share. Stamp fee for the lesser share i.e., 1/3 share alone need be paid for engrossing the final decree as contemplated under Rule 236 of the Civil Rules of Practice. It is noticed that the petitioner, relying on the above rule, has sought for refund of the entire amount which was tendered by them for purchasing the stamp paper. That cannot be. Petitioners are also bound to pay 2/3 of the amount due in respect of the stamp fee payable on the 1/3 share allotted to the defendant. In "A.L. Sivaraman and Others Vs. The State of Kerala and Others, this Court has held that the parties to the partition deed have to meet the expenses for purchasing the stamp paper in proportion to their respective shares in the whole property partitioned. Petitioners had contended that they are not liable to pay the amount due from them in respect of the lesser share though it has been

alloted in favour of the respondent. The petitioners are also liable to pay the required amount in respect of the stamp papers purchased for engrossing the final decree. The order passed by the learned Sub Judge challenged in the Writ Petition is set aside and he is directed to take note of the observations made above and pass appropriate orders. If the court finds that any excess amount was paid by the petitioners over and above the sum which has to be paid by them, appropriate orders are to be passed enabling them to claim refund. Subject to the above observations, Writ Petition is disposed.