(2026) 08 KL CK 0325

In the High Court Of Kerala

Case No : OP(C) NO.301 OF 2017

R. Anil Kumar APPELLANT

Vs

Sree Sudheendra Medical Mission RESPONDENT

Date of Decision : 04-08-2026

Acts Referred:

Kerala Court Fees and Suits Valuation Act, 1959 — Section 7(3), 25(a), 7, 25, 25(b), 27(a), 29, 30, 37(1), 37(3), 38, 45, 48, 26, 19
Constitution of India — Article 227

Citation : (2026) 08 KL CK 0325

Hon'ble Judges : Syam Kumar V. M., J

Bench : Single Bench

Advocate : Sri. G. Sreekumar (Chelur), Sri. A. Balagopalan, Sri. A. Rajagopalan, Sri. M. N. Manmadan, Sri. M. S. Imthiyaz Ahammed, Sri. Prabhu Murali Krishnan, Smt. P. Seena

Final Decision : Dismissed

Judgement

1. The primary question that arises for consideration in this Original Petition (Civil) is whether, for the purpose of valuing a suit seeking a declaration of title and recovery of possession of property consisting of land with buildings, the valuation should be made under Section 7(3) of the Kerala Court Fees and Suits Valuation Act, 1959, (hereinafter referred to as ‘the Act’) i.e., based solely on the market value of the buildings situated on the property, or under Section 25(a) of the Act by taking into account the value of both the land and the buildings standing thereon.

2. Exhibit P12 order dated 16.11.2016 of the Sub Court, Ernakulam, rendered in I.A.No.4752 of 2016 in O.S.No.776 of 2009 is under challenge. Petitioner herein is the plaintiff and respondents are the defendants in the said suit. The suit was instituted seeking a declaration of title over the plaint B and C schedule properties, including the buildings situated therein, which form part of the plaint A schedule property, and for recovery of possession of the said properties from

the defendants on the strength of title. According to the petitioner, the suit was initially valued at ☐ 3,60,000/-, and 1/10th of the requisite court fee was remitted at the time of institution of the suit. Thereafter, the balance court fee was also paid. The respondents, in their original written statement, did not raise any objection regarding the valuation of the suit or the sufficiency of the court fee. Subsequently, however, they filed an application seeking amendment of the written statement, essentially contending that valuation for the prayer in the plaint on the basis of annual income is not sustainable, and the plaintiff has to pay the market value of plaint B and C schedule properties as per Section 25 (a) of the Act. In the said application, Exhibit P4 order dated 09.12.2010 was rendered by the Sub Court holding that the petitioner/plaintiff has not valued the land wherein the buildings are situated and that in the nature of the suit the petitioner/plaintiff has to value the land and the buildings cumulatively. The said order Exhibit P4 was challenged in O.P.(C) No.124 of 2011 before this Court and this Court had rendered Exhibit P5 judgment dated 14.11.2012 *inter alia* holding that the court below committed an error in directing separate valuation of the building and land overlooking the extent of plot and size of the building therein. It was thus directed in the judgment that the market value can be determined under Section 7(3) of the Act only if rent has been entered in the register of the local authority. The matter was thus remanded for fresh consideration in the light of the said observation and subsequently, the Building Tax Assessment Register concerning the buildings in question issued by the Cochin Corporation was produced before the Sub Court. The Sub Court conducted an enquiry in the matter and found that since the assessment register was of the year 1997, the latest assessment is required and that the assessment produced relates only to the buildings and not to the property. Accordingly, the Sub Court rendered the impugned order, whereby an Advocate Commissioner was deputed to assess the market value of the property. The said order rendered by the Subordinate Judge's Court, Ernakulam on 16.11.2016 is impugned herein.

3. Heard Sri.Sreekumar G. (Chelur), Advocate, for the petitioner, Sri.Prabhu Muraleekrishnan, Advocate for the 1strespondent and Smt.R.Ranjanie, Advocate for the 2nd respondent.

4. The learned counsel for the petitioner submitted that Exhibit P12 order of the learned Sub Judge is illegal, improper and unsustainable in law. It is submitted that Section 7 of the Act does not contemplate valuation based on the market value of the property/land together with the buildings standing thereon. According to the learned counsel, there is no dispute regarding the existence of the buildings or the requisite entries relating thereto in the registers maintained by the local authority. It is submitted that, having regard to the nature of the property, where the buildings constitute the principal subject matter and the land is merely appurtenant thereto, sub-section (3) of Section 7 of the Act is attracted. It is further submitted that the relief sought is for recovery of possession of the buildings standing on the land and, therefore, the valuation ought to be governed by Section 7(3) of the Act.

5. It is further submitted on behalf of the petitioner that under Exhibit P3, the reason for amendment is that since according to the plaintiff, no license had been created, the valuation should be under Section 25 (a) leading to the need for an amendment. On the reasoning given in Exhibit P3, the view taken in Exhibit P12 is absolutely unsustainable and the same in the circumstances requires to be set aside.

6. It is also submitted by the learned counsel for the petitioner that the court below ought to have appreciated that Exhibits P6 and P9, namely the property tax assessment register and the tax assessment list respectively, satisfy the requirements contemplated under Section 7(3) of the Act. Hence, according to the petitioner, once the statutory pre-condition under Section 7(3) is fulfilled, the valuation is required to be determined in the manner prescribed therein, and the court below erred in overlooking the said mandate.

7. The learned counsel further submitted that the court below failed to take note of the fact that revision of property tax assessment is undertaken only once in every five years and that the assessment registers are maintained accordingly. In such circumstances, the rejection of the petitioners' contention on the ground that the latest assessment register had not been produced was wholly unjustified. It is argued that this Court had already found the said view to be erroneous and, consequently, Exhibit P12 order ought to have been rendered in favour of the petitioner.

8. The learned counsel also submitted that the court below was not justified in remitting the matter to the Advocate Commissioner for determination of the value of the property. According to the petitioner, where the property is substantially occupied by buildings and consists of buildings together with the appurtenant land, the valuation has to be determined solely on the basis of the rental value in terms of Section 7(3) of the Act. The distinction sought to be drawn by the court below between the value of the land and that of the buildings is not contemplated under the Act and is, therefore, impermissible in law. According to the learned counsel, resort to any other mode of valuation would arise only in cases where the property consists solely of vacant or barren land. In the present case, the existence of the buildings is admittedly not in dispute. Hence, the valuation ought to have been based exclusively on the rental value of the buildings. On the above grounds, the petitioner prayed that Exhibit P12 order be set aside.

9. *Per contra*, the learned counsel for the respondents submitted that the defendants are in possession of the residential buildings situated in the plaint B and C schedule properties not by virtue of any licence granted by the plaintiff, as alleged in the plaint, but in their own independent right. It is contended that the plaintiff has instituted the suit seeking a declaration of title and recovery of possession on the strength of title and therefore, the suit squarely falls within the ambit of Section 25(a) of the Act. Consequently, the suit is liable to be valued on the market value of the properties sought to be recovered.

10. It is further submitted by the learned counsel that the valuation adopted in the plaint is arbitrary and unsupported by the provisions of the Act. According to the respondents, the petitioner/plaintiff cannot invoke Section 7(3) of the Act merely because buildings exist on the property. Section 7(3) governs only the mode of determining the market value of buildings in appropriate cases and does not dispense with the requirement under Section 25(a) that a suit for declaration of title coupled with recovery of possession should be valued on the market value of the property. The respondents contended that the existence of buildings does not alter the nature of the relief claimed or the statutory basis for valuation.

11. The learned counsel further argued that the documents relied upon by the plaintiff, namely the property tax assessment register and tax assessment list, are not conclusive proof of the market value of the suit properties and cannot, by themselves, determine the court fee payable. It is submitted that, in the absence of reliable materials regarding the market value, the court below had rightly directed the Advocate Commissioner to ascertain the value of the property, so as to ensure that proper court fee is paid in accordance with law.

12. It is the further contention of the learned counsel that the question of proper valuation and sufficiency of court fee is a jurisdictional issue, which the court is duty-bound to examine at any stage of the proceedings. The mere fact that no objection was raised in the original written statement would not preclude the respondents/defendants from raising the issue subsequently by seeking amendment of the written statement, particularly when the objection pertains to the maintainability of the suit in its present form. It was therefore submitted that the order passed by the court below is legal, proper and does not warrant interference under Article 227 of the Constitution of India.

13. I have heard both sides in detail and have considered the contentions put forth. The relief claimed in the plaint is one for declaration of title coupled with recovery of possession. The prayer in Exhibit P1 plaint, reads as follows:

> *"Therefore it is humbly prayed that this Hon'ble Court may be pleased to pass a decree granting the following reliefs:*
>
> (a) *Declaring the title of the plaintiff in the Plaint B and C Schedule properties including the buildings situated thereon and which forms part of the plaint A Schedule property and thereby allow the plaintiff* ***to recover possession of the plaint B and C Schedule properties from the defendants on the strength of the title of the plaintiff in the said properties.***
>
> (b) *Award the cost of the suit and*
>
> (c) *Grant such other reliefs as may be prayed for from time to time."* (emphasis added)

The description of the property in plaint schedule is as follows:

> " PLAINT A SCHEDULE
>
> District : Ernakulam Sub District : Ernakulam Taluk : Kanayannur Village : Ernakulam Desom : Thrikanarvattom Tenure : Pattom Survey No. : 151/1 Extent : 12.270 cents
>
> Limit : Cochin Corporation DESCRIPTION

All that part and parcel of land in survey No.151/1 of Ernakulam Village, obtained by the plaintiff and having 3 buildings with respective numbers issued from the Corporation of Cochin, as per a registered deed No.2434/86, Ernakulam S.R.O., together with all rights and improvements thereon.

PLAINT B SCHEDULE

District : Ernakulam Sub District : Ernakulam Taluk : Kanayannur Village : Ernakulam Desom : Thrikanarvattom Tenure : Pattom Survey No. : 151/1 Extent : 4.640 cents

Limit : Cochin Corporation DESCRIPTION

All that part and parcel of land in survey No.151/1 of Ernakulam Village, obtained by the plaintiff and having a building with a door number assigned by the Cochin Corporation as XLI/2476.

PLAINT C SCHEDULE

District : Ernakulam Sub District : Ernakulam Taluk : Kanayannur Village : Ernakulam Desom : Thrikanarvattom Tenure : Pattom Survey No. : 151/1 Extent : 4 cents

Limit : Cochin Corporation All that part and parcel of land in survey No.151/1 of Ernakulam Village, obtained by the plaintiff and having a building with a door number assigned by the Cochin Corporation as XLI/2475."

Thus it is clearly discernible that the relief claimed in the suit is with respect to the plaint schedule property which includes specific extent of land viz., 12.270 cents in A schedule, 4.640 cents in B schedule and 4 cents in C schedule. The factual scenario being so now let us proceed to consider the legal provisions relevant to the subject issue. It is relevant to extract Sections 7 and 25 of the Act, which read as follows:

"7. **Determination of market value.-***(1) Save as otherwise provided, where the fee payable under this Act depends on the market value of any property, such value shall be determined as on the date of presentation of the plaint:*

(2) *The [3] ["market value of agricultural land"] in suits falling under section 25 (a), 25 (b), 27 (a), 29, 30, 37 (1), 37 (3), 38, 45 or 48 shall be deemed to be ten times the annual gross profits of such land where it is capable of yielding annual profits minus the assessment if any made to the Government.*

(3) ***The market value of the building shall in cases where its rental value has been entered in the registers of any local authority, be ten times such rental value and in other cases the actual market value of the building as on the date of the plaint.***

[(3A). The market value of any property other than agricultural land and building falling under sub-sections (2) and (3) shall be the value it will fetch on the date of institution of the suit.]

(4) *Where the subject-matter of the suit is only a restricted or fractional interest in a property, the market value of the property shall be deemed to be the value of the restricted or fractional interest and the value of the restricted or fractional interest shall bear the same proportion to the market value of the absolute interest in such property as the net income derived by the owner of the restricted or fractional interest bears to the total net Income from the property.*

25. ***Suits for declaration-****In a suit for a declaratory decree or order, whether with or without consequential relief, not falling under section 26-***(a)*****where the prayer is for a***

declaration and for possession of the property to which the declaration relates, fee shall be computed on the market value of the property or [rupees one thousand] whichever is higher;

(b)*where the prayer is for a declaration and for consequential injunction and the relief sought is with reference to any immovable property, fee shall be computed on one half of the market value of the property or on [rupees one thousand] whichever is higher;*

(c)*where the prayer relates to the plaintiff's exclusive right to use, sell, print or exhibit any mark, name, book, picture, design or other thing and is based on an infringement of such exclusive right, fee shall be computed on the amount at which the relief sought is valued in the plaint or on [rupees one thousand] whichever is higher;*

(d)*in other cases-(i)where the subject-matter of the suit is capable of valuation fee shall be computed on the market value of the property, and (ii)where the subject-matter of the suit is not capable of valuation fee shall be computed on the amount at which the relief sought is valued in the plaint or on [Rupees one thousand] whichever is higher;"*

The said very fact itself renders unsustainable the contention put forth by the learned counsel for the petitioner based on Section 7 of the Act that since the said provision does not contemplate the market value of the land along with the building and since building necessarily is to stand on a land, the prominent factor being building it will necessarily include the appurtenant land valuation thus remaining confined to sub-section (3) of Section 7 of the Act. The valuation of the suit is thus governed by Section 25 (a) of the Act. The said provision constitutes the charging provision applicable to suits of this nature and mandates that the suit shall be valued on the market value of the property in respect of which the declaration and consequential relief of possession are sought.

14. As is discernible from the plaint schedule description reproduced above, the prayer in the suit is clearly for declaration of title and recovery of possession of plaint B and C schedule property including the building situated thereon. Plaint B and C property described specifically in the respective schedules comprise the extent of lands viz., 4.640 cents and 4 cents respectively in each of the said schedules. After having specifically sought a prayer for declaration and possession by describing the landed property too in addition to the building situated thereupon, the petitioner cannot be heard to contend that the prominent factor being building, market value need be computed only as per Section 7(3) of the Act on the market value of the building alone which in turn has to be based on its rental value as entered in the registers of any local authority or the actual market value of the building as on the date of the plaint.

15. As provided under Section 25(a) of the Act, where the relief sought is a declaration along with possession of the property to which such declaration relates, the court fee is to be computed on the market value of the property or ☐ 1,000/-, whichever is higher. Since the property for which possession is sought to be recovered, and in respect of which declaration of title is claimed, comprises a specified extent of land described in the schedules together with the building standing thereon, the valuation for the purpose of computing the court fee on the market value must necessarily include the value of the land on which the

relevant buildings are situated.

16. While so computing market value of the building specifically, recourse could be made to Section 7(3) of the Act and the mandate therein that the market value of the building shall in cases where its rental value has been entered in the registers of any local authority, be ten times such rental value and in other cases the actual market value of the building as on the date of the plaint. Merely because the building covers substantial part of the land in question, in suits for declaration concerning the composite property of land and building, the requirement under Section 25 (a) of the Act cannot be given a go by. Moreover, in the case at hand, it is the specific finding in Exhibit P12 order that less than 35 percent of the property is covered with buildings.

17. As regards the question whether the trial court was justified in directing the Advocate Commissioner to ascertain the value of the suit property for the purpose of determining the proper court fee payable, it would be relevant to extract Section 19 of the Act, which reads as follows:

> "19. ***Inquiry and commission***.*-For the purpose of deciding whether the subject-matter of a suit or other proceeding has been properly valued or whether the fee paid is sufficient, the Court may hold such inquiry as it considers proper and may, if it thinks fit, issue a commission to any proper person directing him to make such local or other investigation as may be necessary and to report thereon to the Court and the Court may pass appropriate orders as to costs".*

In view of the statutory scheme under Section 19 of the Act, the trial court is vested with the authority to conduct an enquiry into the correctness of the valuation of the suit and the sufficiency of the court fee paid. For the purpose of such enquiry, the court is competent to appoint an Advocate Commissioner to ascertain the relevant factual aspects, including the market value of the suit property, so as to enable it to determine the proper valuation and court fee payable in accordance with law. The appointment of the Advocate Commissioner is merely a procedural step to assist the court in arriving at a proper determination and does not amount to a final adjudication of the issue of valuation. In ***K.Balakrishnan v. T.O.Cheruvathoor*** [2010 SCC OnLine Ker 3303], in a suit is for declaration of title wherein the valuation portion showed that the plaintiff had valued the suit at Rs.1,000/-, noting that the valuation has been under Section 25(b) of the Act and that the prayer in the suit was for declaration and possession of the property, in the light of the contention of the defendant that since the suit is not valued properly, it is necessary to assess the market value of the property and since in the earlier Commission report there is no assessment of the value of the property, it was held that the ascertainment of market value of the property under Section 25(b) of the Act is necessary for the purpose of deciding as to whether the proper court fee has been paid or not. It was also held that from the valuation of the plaint, it is seen that the plaintiff has not resorted to value the plaint on the basis of the market value of the property and hence in the circumstances, there is no justification for dismissing the application for commission. This Court held that apart from the ascertainment of the market value, since certain other matters which are also necessary for the purpose of deciding the proper court fees payable, it may not be correct to say that all the details ascertained by the defendant are contained in the Commissioner's report already filed.

18. In the case at hand, it is seen that the respondents had raised a specific objection regarding the valuation adopted by the petitioner/plaintiff and the sufficiency of the court fee paid. The trial court was therefore required to determine the correctness of the valuation before proceeding further with the suit. Such determination necessarily involves an enquiry into the relevant factual aspects concerning the nature of the property and the materials relied upon by the parties. The contention of the petitioners that Exhibits P6 and P9 are sufficient to attract Section 7(3) of the Act and that no further enquiry is warranted cannot be sustained. Whether the buildings in question satisfy those requirements and whether the documents relied upon by the plaintiff are sufficient to attract Section 7(3) are matters that require factual determination by the trial court. Consequently, the petitioners cannot contend, at this stage, that the market value ought to be determined exclusively under Section 7(3) without permitting the trial court to undertake the necessary enquiry. Whether the said documents satisfy the statutory requirements under Section 7(3), however, is itself a matter to be considered by the trial court on the basis of the evidence available on record. The mere production of the property tax assessment register and tax assessment list does not preclude the court from satisfying itself as to their applicability and evidentiary value for determining the market value under the Act.

19. Further it is to be noted that the appointment of an Advocate Commissioner, is only a procedural step intended to assist the court in collecting the necessary factual materials for deciding the issue of valuation. The Advocate Commissioner is not empowered to adjudicate upon the rights of the parties or determine the court fee payable. The final decision on the applicability of the relevant provisions of the Act and the sufficiency of the court fee remains exclusively with the trial court.

In view of the above, I find no reason to conclude that the trial court had acted without jurisdiction or had exercised its discretion arbitrarily or perversely. The direction issued to the Advocate Commissioner cannot be said to suffer from any illegality warranting interference under Article 227 of the Constitution of India. The impugned order is interlocutory in nature and is intended only to facilitate an effective adjudication of the dispute relating to valuation. Accordingly, the challenge against Exhibit P12 is devoid of merit. Therefore, this O.P.(C) is dismissed.

