
(2006) 09 KL CK 0059

In the High Court Of Kerala

Case No : Writ Petition (C) No. 29724 of 2005

Sarangadharan

APPELLANT

Vs

Mukundan

RESPONDENT

Date of Decision : 28-09-2006

Acts Referred:

Kerala Court Fees and Suits Valuation Act, 1959 — Section 25, 40

Citation : (2006) 4 KLT 805

Hon'ble Judges : K.A. Abdul Gafoor, J

Bench : Single Bench

Advocate : Om Prakash, for the Appellant; V.N. Sankarjee, for the Respondent

Final Decision : Dismissed

Judgement

K.A. Abdul Gafoor, J.—The challenge in this Writ Petition is against Exts.P3 and P5 orders passed by the Munsiff's Court, Cherthala in O.S.No.229/2003 filed by the respondent seeking a declaration that two promissory notes stated to be executed by him are null and void.

2. The petitioners/defendants in the suit raised two preliminary objections: The suit ought to have been filed in the Sub Court and the court fee paid was not sufficient. These objections were on the ground that the amount covered by the promissory notes was Rs. 1,75,000/- which was beyond the pecuniary jurisdiction of the Munsiff's Court and that the ad velorem court fee paid was not based on the monitory value of the declaration sought for. These objections were overruled in Ext.P3.

3. The petitioners also objected to the amendment sought for by the plaintiff to delete the words "voidable" appearing in the plaint. That prayer was allowed as per Ext.P5. Ext.P5, insofar as the amendment to that effect has been allowed, is also impugned in this Writ Petition.

4. I will first deal with the challenge against Ext.P5. The amendment sought for does not go to the root of the claims advanced or to the limitation. in such

circumstances, the amendment cannot be stated to be unjustified to invite interference. Therefore, the challenge against Ext.P5 fails.

5. Now, I will consider the challenge against Ext.P3 order. The challenge is sought to be sustained relying on the decision in *Narayani Ammal v. Sanjeev* 2001 (2) KLT 588. According to the petitioners, the facts situation arising in that case is also the same as in the case on hand. Therefore, viewing the prayer as if it was to set aside the document, the court fee also ought to have been directed to be paid in accordance with Section 40 of the Kerala Court Fees and Suits Valuation Act, taking into account the monetary value of the documents in question. Para 9 in *Narayani Ammal v. Sanjeev* 2001(2) KLT 588 case reads as under:

It is therefore clear that the three documents which are the subject matter of the suit in question are actually voidable and not null and void even if the entire averments in the plaint are accepted as correct. Viewed from that perspective, the actual prayer that should have been included in the plaint, on the averments contained therein was only to set aside the documents and not to declare the same as invalid. No provision of law has been placed before me which would show that the alleged fraudulent documents can be treated as void and not voidable.

6. The court held so viewing from the perspective as to what ought to have been the prayer sought for by the plaintiff. Here, in this case, the plaintiff has to mould the prayer in the suit. The suit prayer is to declare the documents as invalid. In such circumstances, it is not for this Court to decide and dictate to the plaintiff that his prayer ought to have been to set aside the document. Whether the decree sought for could be granted in the light of the averments is a matter to be agitated and found at the last stage when the decree is to be passed. Therefore, I am not pronouncing on that aspect in this petition. The petitioner can very well take his contentions pointing out the decision that such a prayer could not be granted. Going by the prayer as now sought, it being a declaration, it is not proper to direct the plaintiff to pay the court fee, as if payable in terms of Section 40 of the Kerala Court Fees and Suits Valuation Act. The prayer sought for being a declaratory nature, the plaintiff did have liability to pay it in terms of Section 25 of the Act only, unless the plaintiff wants to modify the prayer.

Accordingly, Ext.P3 also has to be sustained, of course, giving liberty to the petitioners to agitate as to the nature of relief to be granted if any and the court fee already paid. Therefore, the challenge against Ext.P3 is also declined to the above extent.

Writ Petition fails, dismissed.