



2023:KER:74924

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE C. JAYACHANDRAN

TUESDAY, THE 14TH DAY OF NOVEMBER 2023 / 23RD KARTHIKA, 1945

OP(C) NO. 2296 OF 2023

AGAINST IA.NO.12/2023 IN OS 1/2020 OF ASSISTANT SESSIONS

COURT/SUB COURT, MUVATTUPUZHA

PETITIONER/PETITIONER:

KIRAN KURIAN MATHEW
AGED 46 YEARS
S/O C.K.MATHAY CHEITTAYAMKUDIYIL HOUSE POTHANIKKADU
P.O, KOTHAMANGALAM ERNAKULAM DISTRICT, REPRESENTED BY
THE POWER ATTORNEY HOLDER PAUL C KURIAN, AGED 78 YEARS,
S/O KURIAKOSE CHEITTAYAMKUDIYIL HOUSE POTHANIKKADU P.O,
KOTHAMANGALAM ERNAKULAM DISTRICT,, PIN - 686671
BY ADVS.
ALIAS M.CHERIAN
MINNU DARWIN
AMEERA JOJO
K.M.RAPHY
BRISTO S PARIYARAM

RESPONDENTS/RESPONDENTS:

- 1 ASHLY MATHEW C
AGED 52 YEARS
W/O ROY, D/O C.K. MATHAI, CHETTIYAMKUDIYIL HOUSE,
POTHANIKKADU KARA, POTHANIKKAD VILLAGE KOTHAMANGALAM
TALUK NOW RESIDING AT THANANGATTIL HOUSE MULANTHURUTHY
P.O, MULANTHURUTHY VILLAGE KANAYANNOOR TALUK ERNAKULAM
DISTRICT,, PIN - 682314
- 2 SOJA SUSAN MATHEW C
D/O. OF C.K.MATHAI CHETTIYAMKUDIYIL HOUSE POTHANIKKADU
KARA, POTHANIKKAD VILLAGE KOTHAMANGALM TALUK NOW
RESIDING AT 74 COUCHMAN CRESENT CHISHLOM ACT 2905
AUSTRALIA REPRESENTED BY POWER OF ATTORNEY HOLDER ROY
THANGADAN, AGED 54 MULANTHURUTHY P.O, MULANTHURUTHY
VILLAGE KANAYANNOOR TALUK ERNAKULAM DISTRICT,, PIN -
682314
BY ADVS.
MANU VYASAN PETER
P.B.KRISHNAN(K/1193/1994)
P.B.SUBRAMANYAN(K/1145/2009)
SABU GEORGE(K/000711/1998)
B.ANUSREE(K/000951/2016)

THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 14.11.2023,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



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(CR)

J U D G M E N T*Dated this the 14th day of November, 2023*

Ext.P7 order is under challenge in this Original Petition, as per which, an objection to the question of proper court fee to be levied was relegated to be considered after trial, but as the first issue before deciding other issues.

2. Having heard the learned counsel appearing on both sides, this Court is of the opinion that Ext.P7 order is not in terms of the mandate under Section 12 of the Kerala Court Fees and Suits Valuation Act. Section 12(1) directs that, the court has to decide, based on the materials and allegations on the plaint, whether proper court fee thereon has been paid, which has to be done even before ordering the plaint to be registered. Once the plaint is registered and the defendant



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appears on notice and takes up the issue of improper valuation and insufficient court fee, the same has to be heard, going by Section 12(2), before evidence on merits of the claim is recorded. Explanation to Section 12 clarifies that merits of the claim refers to matters which arise for determination in the suit, not being matters relating to the frame of the suit, misjoinder parties and causes of action, but inclusive of matters arising on plea of *res judicata*, limitation and the like. In the order under challenge, the learned Sub Judge finds that an issue has already been raised on the correctness of the valuation and Court fee paid, that the issue involves a mixed question of law and facts and that the issue could be decided only after trial. Thereafter, the learned Sub Judge finds that, the issue can be decided after trial, as the first issue, before addressing the remaining issues. It appears that the course adopted by the learned Sub Judge is not legal,



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when section 12 (1) & (2) specifically mandate that such issue has to be decided before commencement of the trial 'on merits'. If the Sub Court is of the opinion that the question of valuation and court fee is a mixed question of fact and law, possibly evidence may be permitted on that question and a decision taken accordingly, before commencement of the trial on the merits of the matter, as clarified by the explanation to Section 12.

In such circumstances, Ext.P7 order is set aside. The matter will be considered by the learned Sub Judge in accordance with law, especially Section 12 of the Kerala Court Fees and Suits Valuation Act. The Original Petition is disposed of as above.

Sd/-

C. JAYACHANDRAN
JUDGE



APPENDIX OF OP(C) 2296/2023

PETITIONER EXHIBITS

- Exhibit P1 TRUE COPY OF THE PLAINT IN O.S. NO. 1 OF 2020 ON THE FILE OF THE SUB COURT, MUVATTUPUZHA
- Exhibit P2 TRUE COPY OF WRITTEN STATEMENT IN O.S. NO. 1 OF 2020 ON THE FILE OF THE SUB COURT, MUVATTUPUZHA
- Exhibit P3 TRUE COPY OF ADDITIONAL WRITTEN STATEMENT IN O.S. NO. 1 OF 2020 ON THE FILE OF THE SUB COURT, MUVATTUPUZHA
- Exhibit P4 TRUE COPY OF THE PETITION I.A NO. 12 OF 2023 IN O.S NO 1 OF 2020 ON THE FILE OF THE SUB COURT, MUVATTUPUZHA
- Exhibit P5 A TRUE COPY OF THE OBJECTION FILED IN I.A NO. 12 OF 2023 IN O.S NO 1 OF 2020 ON THE FILE OF THE SUB COURT, MUVATTUPUZHA
- Exhibit P6 A TRUE COPY OF THE PARTITION DEED NO. 1327 OF 2007 DATED 02/05/2007 OF THE SUB REGISTRY OFFICE, POTHANICAD
- Exhibit P7 A TRUE COPY OF THE ORDER DATED 05/10/2023 IN I A. NO. 12 OF 2023 IN OS NO. 1 OF 2020 PASSED BY THE SUB COURT, MUVATTUPUZHA