

1 PATHUMMA W/O. ABDULKAREEM, AGED 74, VATTAMKULAM AMSOM, UDINIKKARA DESOM, PONNANI TALUK, PIN - 679578. 2 AMINAKKUTTY D/O. ADBULKAREEM, AGED 54 , VATTAMKULAM AMSOM, UDINIKKARA DESOM, PONNANI TALUK, PIN - 679578. 3 ABDULLAKKUTTY AGED 52 YEARS S/O. ABDULKAREEM, AGED 52, VATTAMKULAM AMSOM, UDINIKKARA DESOM, PONNANI TALUK, PIN - 679578. 4 AYOOB S/O. ABDULKAREEM, AGED 49, VATTAMKULAM AMSOM, UDINIKKARA DESOM, PONNANI TALUK, PIN - 679578.. 5 JAMEELA AGED 47 YEARS D/O. ABDULKAREEM, AGED 47, VATTAMKULAM AMSOM, UDINIKKARA DESOM, PONNANI TALUK, PIN - 679578. 6 SULAIKHA AGED 42 YEARS D/O. ABDULKAREEM, AGED 42, VATTAMKULAM AMSOM, UDINIKKARA DESOM, PONNANI TALUK, PIN - 679578. 7 PALLATH AYISUMMA W/O. SAITHUTTY, AGED 52, RESIDING AT VATTAMKULAM AMSOM, UDINIKKARA DESOM, PONNANI TALUK, PIN - 679578. 8 MOIDEEN ..2.. AGED 43 YEARS S/O. SAITHUTTY,AGED 43, RESIDING AT VATTAMKULAM AMSOM, UDINIKKARA DESOM, PONNANI TALUK, PIN - 679578. 9 SAINUDHEEN AGED 42 YEARS S/O. SAITHUTTY,AGED 42, RESIDING AT VATTAMKULAM AMSOM, UDINIKKARA DESOM, PONNANI TALUK, PIN - 679578. 10 MOOSA AGED 32 YEARS S/O. SAITHUTTY,AGED 32, RESIDING AT VATTAMKULAM AMSOM, UDINIKKARA DESOM, PONNANI TALUK, PIN - 679578. 11 SUBAIDA D/O. SAITHUTTY,AGED 29, RESIDING AT VATTAMKULAM AMSOM, UDINIKKARA DESOM, PONNANI TALUK, PIN - 679578. 12 SAFIYA AGED 45 YEARS W/O.AYOOB, AGED 45, RESIDING AT VATTAMKULAM AMSOM, UDINIKKARA DESOM, PONNANI TALUK, PIN - 679578. 13 MUNEER AGED 18 YEARS S/O. AYOOB, (LATE A MINOR, NOW A MAJOR),AGED 18, RESIDING AT VATTAMKULAM AMSOM, UDINIKKARA DESOM, PONNANI TALUK, PIN - 679578. 14 SHAHIL S/O. AYOOB, MINOR AGED 16, RESIDING AT VATTAMKULAM AMSOM, UDINIKKARA DESOM, PONNANI TALUK, PIN - 679578. (REPRESENTED BY HIS GUARDIAN MOTHER RESPONDENT NO.12) BY ADVS. SRI.ARUN MATHEW VADAKKAN

SRI.K.P.SUDHEER

THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 29.02.2024,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: ..3..
C.R.

J U D G M E N T

Dated this the 29th day of February, 2024

Petitioner herein is the plaintiff in the s

O.S.No.20/2014. Petitioner herein is aggrieved by Ext.P3 order of the learned Sub Judge, wherein the prayer of the petitioner/plaintiff to treat an amended relief as ancillary to the main relief sought for in the plaint - for the purpose of

court fee - is rejected. The suit, as fi

also for injunction. Pendende lite, the plaint was amended and a relief for recovery of possession as well - in case any extent of land which belongs to ..4.. the plaintiff is found to be in the possession of the defendants - was incorporated. For the purpose of court fee, the plaintiff/petitioner seeks to treat the amended relief for recovery of possession, as ancillary to the main relief for fixation of boundary and relied upon the Proviso to Section 6 of the Kerala Court Fees and Suits Valuation Act (herein after referred to as 'the Act'). This contention is seen rejected by the impugned Ext.P3 order.

2. Heard Sri.S.V.Balakrishna Iyer, learned Senior Counsel, instructed by Sri.P.B.Krishnan, on behalf of the petitioner and Sri.K.P.Sudheer, learned counsel for the respondents.

3. Inviting the attention of this Court to

Section 6 of the Act, it was urged that, if the relief sought for is only ancillary to the main relief, the plaint is liable to be charged only on the value of the main relief. On the scope of the ..5.. expression ancillary, learned Senior relied upon the Law Lexicon by P.Ramanatha Aiyar (Reprint Edition 1987), wherein it is stated thus:

Ancillary. Aiding; Auxiliary; Subordinate; attendant upon; that which aids or promotes a proceeding regarded as the principal. (Abbott L.D.)(as) ancillary administration; ancillary attachment; ancillary action (Ency Lond.) Reliance is also placed on Bouvier's Law Dictionary to expatiate the scope of the expression alternative, which is treated thus in the said Law Dictionary:

ALTERNATIVE. Allowing a choice between two or more things or acts to be done. In contracts, a party has often the choice which of several things to perform. A writ is in the alternative which commands the defendant to do the thing required, or show the reason wherefore he has not done; Finch 257; S Bla Com. 273. Under the common-law practice, the Art mandamus is an alternative writ; S Bla. Com.111; but in modern practice this writ is often dispensed with and its place is taken by a rule to show cause. See MANDAMUS. ..6..

Finally, in Prem's Judicial Dictionary, the term alternative is seen explained thus: Alternative-The one or the other of two things. A privilege of choosing one of two things or courses; either of tow objects offered to one's choice. (Abbott L.Dict.)

(as) alternative contract; alternative obligation ; alternative remedy etc.

4. Based on the above treatise on the scope of

the expressions ancillary and alternative, it is the submission of the learned Senior Counsel that the amended relief for recovery of possession is only ancillary to the main relief for fixation of boundary. In support of the above contention, the learned Senior Counsel also relied on two judgments of this Court, i.e. State Bank of India, Asset Recovery Management Branch, Ernakulam v. Niyas and Another [2021 (2) KHC 18 (DB)] and Appukuttan v. Kamalakshi [1996(2) KLT 977]. ..7..

5. Per contra, learned counsel for the respondent would submit that, a relief for recovery of possession can never be ancillary to a relief for fixation of boundary. It was pointed out that the suit was originally filed before the Munsiff Court, Ponnani and pursuant to the amendment, the

pecuniary jurisdiction was taken stock of to transfer the suit to the Sub Court, Tirur. Learned Counsel would rely on the decision of a learned Single Judge of the Andhra Pradesh High Court in V.Rajeshwar Rao v. N.Yadagiri Reddy and Others [2000 (4) ALT 366], wherein Section 6 of Andhra Pradesh Court Fees and Suits Valuation Act and the issue as to whether the reliefs are ancillary in nature, is seen addressed.

6. Having heard the learned counsel appearing for

the respective parties, this Court is not in a position to endorse the submissions made by the learned Senior Counsel. As rightly argued by the learned Senior Counsel, the issue is whether a ..8.. relief for recovery of possession is ancillary to the relief for fixation of boundary. This Court is of the opinion that, a relief for fixation of boundary is only a step-in-aid for the substantive relief for recovery of possession. In other words, for grant of the relief for recovery of possession, the boundary as between the disputed properties has to be fixed, which alone will enable the Court to find out whether there is any land of the plaintiff, which is in the possession of the defendants, so as to ultimately grant the relief for recovery of possession. Therefore, on any reckoning of the matter, the relief for recovery of possession has to be treated as the main relief and the relief for fixation of boundary may perhaps be treated as ancillary to the main relief for recovery of possession; and not vice versa, as contented for by the petitioners. ..9..

7. Assuming that both reliefs were sought for, in

the original plaint, there can hardly be any doubt left, as to which relief is liable to be valued as the main relief. Either both reliefs are liable to be valued in terms of Section 6(1) of the Act, taking the aggregate value; or the highest of the fees leviable in respect of the two reliefs would have applied in terms of Section 6(2) of the Act.

At any rate, if both reliefs were originally sought for, the relief for fixation of boundary could not have been treated as ancillary to a relief for recovery of possession. As espoused in the Law Lexicon by P.Ramanatha Aiyar, ancillary means aiding, auxiliary, subordinate, attendant upon and that which aids or

promotes a proceeding regarded as the principal. As already held, the relief for fixation of boundary is aiding the relief for recovery of possession and not vice-versa, wherefore a relief for recovery of possession cannot be treated as ancillary to the so-claimed main relief for fixation of boundary. ..10..

8. This Court finds that the judgments relied upon by the learned Senior Counsel in support of the assertions are also not on all fours to the

fact situation herein. In State Bank of India (supra), the issue was with respect to a decree, wherein a declaration was sought for in respect of a sale deed as sham and void document, coupled with a further relief to execute a deed of re-conveyance in respect of the plaint schedule

property. A Division Bench of this Court held

that, the relief for re-conveyance being the main relief, court fee is liable to be paid on that

only. The facts therein and the nature of the relief

cancellation of registered sale deeds were sought for, along with the relief for recovery of possession. In that case, though the plaintiff ..11.. paid court fee on both the reliefs, the defendant, while carrying an appeal, took a contention that the second relief for recovery of possession is only ancillary to the main relief for cancellation of sale deeds. The learned Single Judge found that, the reliefs are prayed for on the basis of the same cause of action and that relief for recovery of possession is a relief, which supports or assist the plaintiff in effectuating the main reliefs and therefore, liable to be treated only as ancillary to the main relief of cancellation of sale deeds. Here again, this Court notice that the

facts are quite distinguishable. The main relief

sought for was to cancel certain sale deeds on what ever grounds urged therein; and if that relief is liable to be granted, the relief for recovery of possession is merely consequential to the said relief and therefore, can be treated as ancillary. In other words, once the sale deeds are found to be bad or illegal for some reason

and hence cancelled, the recovery is nothing but a ..12.. necessary corollary/consequence, which is not the situation herein. In the instant case, assuming the relief for recovery of possession is not sought for, the relief for fixation of boundary will not carry the plaintiff any where. It is realising this difficulty, the plaintiff chose to amend the plaint, so as to incorporate the relief for recovery of possession. It cannot be said that the latter is automatic or merely consequential to the former. In other words, even without the former, the latter relief can be granted; but not vice-versa. In substance, this Court holds that the relief for recovery of possession is the main relief and that cannot be subsidiary, consequential, auxiliary or ancillary to the relief sought for fixation of boundary.

9. In the circumstances, this Court finds no infirmity with respect to Ext.P3 impugned order. ..13..

10. As requested by the learned Senior Counsel for the petitioners/plaintiffs, the finding with respect to the market value of the property is

also not interfered with, so as to enable

especially in terms of Section 7 of the Kerala Court Fees and Suits Valuation Act. The Original Petition will stand disposed of, as above. Sd/- C. JAYACHANDRAN JUDGE TR ..14.. APPENDIX OF OP(C) 3103/2016 PETITIONER EXHIBITS EXHIBIT P1 DATED 27.02.2008- A TRUE COPY PLAINT IN O.S.47/2008 ON THE FILE OF MUNISIFF- MAGISTRATE'S COURT, PONNANI. EXHIBIT P2 DATED 20.02.2013 - A TRUE COPY OF I.A.252 OF 2013 IN O.S.47/2008 ON THE FILE OF MUNISIFF-MAGISTRATE'S COURT, PONNANI. EXHIBIT P3 DATED 21.11.2016 - A TRUE COPY OF THE

ORDER IN O.S.NO. 20 OF 2014 ON THE FILE

OF THE SUBORDINATE JUDGE'S COURT, TIRUR.

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