

**Joseph Peter Vs. Mary Peter**

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**SooperKanoon Citation :** [sooperkanoon.com/48646](http://sooperkanoon.com/48646)

**Court :** Kerala

**Decided On :** Feb-25-2015

**Judge :** Honourable Mr.Justice P.Bhavadasan

**Appellant :** Joseph Peter

**Respondent :** Mary Peter

**Judgement :**

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE P.BHAVADASAN WEDNESDAY, THE 25<sup>H</sup> DAY OF FEBRUARY 2015 6<sup>TH</sup> PHALGUNA, 1936 OP(C).No. 158 of 2015 (O) ----- OS12014 OF II ADDL.MUNSIFF COURT, ERNAKULAM ----- PETITIONER : ----- JOSEPH PETER, AGED 57 YEARS, S/O PETER, PALLATHU HOUSE NOW RESIDING AT KALLUNGAL HOUSE, SJRRA-41 ST. JOHN BAPTIST ROAD, PALARIVATTOM POST-682025 EDAPPALLY SOUTH VILLAGE, ERNAKULAM DISTRICT. BY ADVS.SRI.N.SUBRAMANIAM SRI.M.S.NARAYANAN SRI.P.T.GIRIJAN SMT.USHA NARAYANAN RESPONDENT : ----- MARY PETER, AGED 82 YEARS, W/O. P.J.

PETER, PALLATH HOUSE PONNURUNI DESOM, THAMMANAM P.O.-682 032, EDAPPALLY SOUTH VILLAGE, ERNAKULAM DISTRICT AS NEXT FRIEND OF W/O P.J.PETER BY ADV. SRI. P.K. RAVISANKAR THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 25-02-2015, THE COURT ON THE SAME DAY

DELIVERED THE FOLLOWING: Mn ...2/- OP(C).No. 158 of 2015 (O)

----- APPENDIX PETITIONERS' EXHIBITS :  
----- EXHIBIT P1: TRUE COPY OF TH PLAINT  
DATED3012.2013 IN O.S. NO. 1/2014 OF THE II ADDL. MUNSIFF COURT,  
ERNAKULAM. EXHIBIT P2: TRUE COPY OF THE WRITTEN STATEMENT  
DATED44.2014 IN O.S. NO. 1/2014 IF THE II ADDL. MUNSIFF COURT,  
ERNAKULAM. EXHIBIT P3: TRUE COPY OF THE SETTLEMENT DEED  
DATED1810.2013 EXECUTED BY THE RESPONDENT IN FAVOUR OF THE  
PETITIONER AND REGISTERED AS DOC.NO. 3689/2013 OF THE SRO  
EDAPPALLY. EXHIBIT P4: TRUE COPY OF THE APPLICATION1812.2014 IN  
I.A. 10080/2014 IN O.S. NO. 1/2014 OF THE II ADDL. MUNSIFF COURT,  
ERNAKULAM. EXHIBIT P5: TRUE COPY OF THE

ORDER

DATED121.2015 IN I.A. 10080/2014 IN O.S. NO.1/2014 OF THE II ADDL.  
MUNSIFF COURT, ERNAKULAM RESPONDENT(S)' EXHIBITS : NIL  
----- //TRUE COPY// P.A. TO JUDGE  
Mn P.BHAVADASAN, J.

----- O.P.(C).No.158 of 2015 ----- Dated this  
the 25th day of February, 2015

JUDGMENT

Aggrieved by Ext.P5 order in I.A.No.10080 of 2014 in O.S.No.1 of 2014, whereby  
the court below refused to accept the contention raised by the defendant that court  
fee will have to be paid under section 40 of the Court Fees and Suit Valuation Act,  
the petitioner/defendant has come up before this Court under Article 227 of the  
Constitution of India.

2. The plaintiff represented by the next friend, none other than his own wife,  
sought for declaration of title and also for a declaration that the document said to  
have been executed by the father in favour of the defendant who is none other  
than his son is null and void. The plea put forward was one of mental in-capacity to  
execute the document at the relevant time.

3. It is not in dispute that the court below conducted preliminary enquiry and found that the father of the petitioner herein was incapable of managing his affairs and therefore the 2 O.P.(C).No.158 of 2015 suit by the next friend was held to be proper.

4. In the suit the property was valued as an agricultural property and court fee was paid under section 25(b) of the Court Fees and Suit Valuation Act.

5. In the written statement, apart from trying to uphold the document in favour of the defendant a contention was also raised that the suit was not properly valued and necessary court fee has not been paid.

6. The question regarding validation and payment of requisite court fee was considered as a preliminary issue by the court below.

7. Before the court below the contention that was taken by the defendant was that the relief sought though declaratory one in fact squarely falling within the ambit of section 40 of the Court Fees and Suit Valuation Act, therefore court fee will have to be paid under that provision. If that be so, the learned counsel pointed out that the property has been valued in the document itself at a phenomenal amount of 2,83,68,000/- (Rupees Two crores eighty three lakhs sixty eight thousand only). Reliance was 3 O.P.(C).No.158 of 2015 also placed in the decision reported in Sathedevevi Vs. Prasanna [2010 (2) KLT642.

8. The contention of the defendant is met by the plaintiff on the basis that no relief seeking setting aside of the deed was sought for and only declaratory prayers were incorporated in the plaint. Further it was pointed out that in the valuation portion it has been clearly stated that the property is an agricultural property and therefore section 7(a) comes into effect.

9. The court below accepted the plea put forward by the plaintiff and declined to accept the contention raised by the defendant and therefore held that the court fee paid was proper.

10. Assailing the said finding the learned counsel appearing for the petitioner contended that the court below has erred both on facts and in law in holding that

the relief falls within the ambit of section 25 of the Court Fees and Suit Valuation Act. An ingenious drafting of the relief cannot take out the suit from the liability to pay court fee which has to be paid in accordance with law. It is contended that what in effect is being sought for is cancellation of the deed itself in the sense that the right which 4 O.P.(C).No.158 of 2015 the defendant obtained under the document is sought to be set at naught and if that be so suit will have to be necessarily treated as one dealing in which the relief sought for is for cancellation of the deed. This aspect of the case has been lost sight by the court below and that has resulted in a wrong order being passed. Alternatively it is contended that even assuming section 25 applies court fees will have to be paid on half of the market value of the property. The value of the property shown in the document has already been mentioned. At least half of that value has to be shown as the valuation for the suit. That has also not been done. It is therefore contended that on none other grounds the order can be sustained.

11. The learned counsel for the respondent contended that it is not a case where the plaintiff alleged that the document executed in favour of the defendant was a voidable document. But on the other hand the stand taken by the plaintiff was that it was a void document. Therefore the specific stand of the plaintiff was that it is not necessary to seek cancellation of document as it is non est in law and a declaration is sufficient in that regard. If 5 O.P.(C).No.158 of 2015 that be so, section 40 has no application. For the above proposition, the learned counsel relied on the decision reported in Poonath Devaki and Others V. Vayalveetil Balakrishnan and Others [2011 KHC563 and Kumaran V. Chandran [1985 KHC321. As regards the second contention in the plaint and in the statement appended to the plaint, it is stated that it is an agricultural property and if that be so, the court below was justified in holding that section 7(a) was attracted. It is contended that it forms part of the plaint and there was no specific denial from the side of the defendant that it is not an agricultural property, nor was an issue raised in that regard. It is therefore contended that no grounds have been made out to interfere the order of the court below.

12. It is no doubt true that in the decision reported in Satheedevi Vs. Prasanna [2010 (2) KLT642 the question as to payment of court fee in relation to a suit in

which cancellation of the document is sought for was considered in extent. The Apex Court after considering the matter at length held that in such cases the value stated in the document will govern the matter. If 6 O.P.(C).No.158 of 2015 that principle is to be applied necessarily in this case the value has to be taken as 2,83,68,000/- (Rupees Two crores eighty three lakhs sixty eight thousand only).

13. It is well settled that the court fee will have to be determined on the basis of the pleadings in the plaint. It is also well settled that the court fee is a matter between the State and the plaintiff and unless there is a question of jurisdiction involved, the defendant may not have much say in the matter. In the case on hand, of course, if the contention of the defendant is accepted, the jurisdictional issue will prop up for consideration.

14. In the light of the averment in the plaint that the document is null and void and does not confer any manner of right on the defendant, the question of applying section 40 may not arise. It is not as if that the plaint proceeds on the basis that the document is a voidable one in which case it is necessary to set aside and a prayer for cancellation may be absolutely necessary. On the other hand what is contended is that the executant had no mental capacity to execute a document and it was a non est document which confers no manner of right 7 O.P.(C).No.158 of 2015 whatsoever on the grantee.

15. When such a plea taken, it may not be necessary to seek cancellation of the document in view of the decision reported in Poonath Devaki and Others V. Vayalveetil Balakrishnan and Others [2011 KHC563 and Kumaran V. Chandran [1985 KHC321.

16. It may be noticed that in the decision reported in 2010 (2) KLT642 the plaint was allowed to be amended and the amended plaint incorporated a prayer for cancellation of the document falling squarely within the ambit of section 40 of the Court Fees and Suit Valuation Act. It was in that context, the Apex Court had occasion to hold that the valuation has to be on the basis of the value shown in the document. No such contingency arise in the case on hand.

17. In the light of the view taken by this Court in the decisions referred to above, the court below seems to have been justified in finding that since there is no prayer for setting aside the document the question of payment of court fees under section 40 will not arise for consideration. That seems to be a 8 O.P.(C).No.158 of 2015 possible view.

18. Coming into the second contention raised by the learned counsel for the petitioner, that too lacks merits. As pointed out by the learned counsel for the respondent, the plaint contains an averment that the land is an agricultural land. In the written statement filed by the petitioner herein, it is contended as follows:

19. The valuation and court fee are not correct. The plaintiff has not valued his reliefs properly nor has he paid proper court fee. The valuation by the plaintiff of prayer B and payment under section 25(A) of the Court Fees Act is not correct and is disputed. However, there is no specific denial in the written statement that the claim made by the plaintiff is an agricultural land.

19. Face with the above situation, the learned counsel appearing for the petitioner pointed out that the document recites the property as purayidam which means garden land and it cannot therefore qualify as an agricultural land.

20. This aspect need not detain us any longer in the light of the decision reported in Narayanan Nair Vs. Dr.Lokeshan Nair 9 O.P.(C).No.158 of 2015 [2014 (2) KLT868 and also the the unreported decision in O.P. (C) No.1435 of 2014. It cannot be said that a garden land cannot be used as an agricultural property for the purpose of Court Fees and Suit Valuation Act. In the light of the above facts the court below was perfectly justified in coming the conclusion that court fees paid under section 25 is correct. There is no grounds made out to interfere with the order passed by the court below. This petition is without merits. It is accordingly dismissed. P.BHAVADASAN, JUDGE. rkc.