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Nabeesa Vs. Kuhnami

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Court : Kerala

Decided On : Oct-19-2006

Reported in : 2006(4)KLT757

Judge : M. Sasidharan Nambiar, J.

Acts : Kerala Court Fees and Suit Valuation Act, 1959 - Sections 1(2), 4, 7, 7(1), 7(2), 7(3A), 7(4), 9, 10, 20, 21, 25, 27, 29, 30, 37(1), 37(2), 37(3), 38, 45, 48, 52, 53, 53(2) and 54; Kerala Court Fees and Suit Valuation (Amendment) Act, 1991 - Sections 6;

Appeal No. : W.P. No. 20830 of 2006

Appellant : Nabeesa

Respondent : Kuhnami

Advocate for Def. : Kodoth Sreedharan, Adv.

Advocate for Pet/Ap. : M. Gopikrishnan Nambiar, Adv.

Disposition : Appeal dismissed

Judgement :

M. Sasidharan Nambiar, J.

1. What is the proper jurisdictional value to be shown in a suit for partition, where the prayer is for partition and separation of joint possession of the plaint schedule properties?. It is the question to be settled in this petition.

2. Petitioners are the defendants and respondent the plaintiff. The suit is for partition of the plaint schedule properties comprising 12 items in different survey Numbers. Plaintiff has valued the properties as provided under Section 7 of the Court Fees and Suit Valuation Act, hereinafter referred to as the Act, and shown the total market value at Rs. 2,25,000/- and value of his 1/3rd share at Rs. 75,000/-. Fixed court fee of Rs. 50/- under Section 37(2) of the Act was paid. Petitioners in their written statement contended that the plaint schedule properties are not properly valued for the purpose of court fees and jurisdiction and if properly valued, the same will be out of the pecuniary jurisdiction of the Munsiff Court. Under Ext.P3 order, learned Munsiff answered issue No.2 regarding correctness of the valuation and court fee paid, in favour of respondent. It is challenged in this petition filed under Article 227 of the Constitution of India.

3. The argument of Advocate Sri.Gopikrishnan Nambiar, learned Counsel appearing for petitioners is that though respondent has paid fixed court fee under Section 37(2) of the Act and in view of the allegation in the plaint that he is in joint possession of the property, the court fee paid may be correct, the jurisdictional value is incorrect and if properly valued, Munsiff Court has no pecuniary jurisdiction to try the suit. Relying on the decision of this Court in Mukundan v. Nalini 1971 KLT 741 and in Gopalan Nambiar v. Balakriahnan Nambiar 1972 KLT 1087 it was argued that though fixed court fee has to be paid on the value of the share claimed by the plaintiff, as suit governed by Section 37(2) is specifically excluded in Sub-section (2) of Section 1, market value shown in the plaint by computing 10 times the annual gross profits of the properties and the value of the building is incorrect and the valuation should be the market value of the properties as provided under Sub-section (3A) of Section 7 of the Act. Learned Counsel Sri.Kodoth Sreedharan appearing for respondent vehemently argued that a suit for partition coming within the ambit of Section 37(2) of the Act is specifically excluded under Sub-section (2) of Section 7 and Section 53 has been enacted as to how such a suit is to be valued. It was argued that when in a suit for partition coming

under Section 37(1), plaint has to be valued as provided under Sub-section (1) of Section 53, when joint possession is alleged in the plaint, it is to be valued as provided under Sub-section (2) of Section 53 and when the case is that the plaintiff is in joint possession of the properties and what is sought for is only separation of the joint possession, the plaint is to be valued for the relief of severance of joint possession and that could only be the value as shown by the plaintiff and therefore the valuation is correct and there is no infirmity in Ext. P3 order warranting interference in exercise of the extra ordinary jurisdiction of this Court under Article 227 of Constitution of India. Learned Counsel also relied on the decision of a learned single Judge of this Court (as His Lordship then was) in Kunju Mohammed Kunju v. Kunju Auwa Ummal 1968 KLT 967.

4. Before considering the question of law, how respondent has valued the plaint has to be seen. The schedule of valuation of Ext.Pl plaint reveals how plaintiff has valued the plaint. Ten times of the annual income of the properties is shown as the value and the value of the title building is added to it and the total is shown as the valuation for the purpose of jurisdiction. It is shown as Rs. 2,25,000/-. As respondent is claiming 1/3 share he has shown the value of his share for the purpose of valuation of the suit at Rs. 75,000/-.

5. Chapter II of the Act comprising Sections 4 to 9 deals with the liability to pay court fee. Chapter III comprising Sections 10 to 20 provides the determination of court fee. Chapter IV comprising Sections 21 to 52 provides for computation of fee. Chapter V comprising Sections 53 and 54 provides for valuation of suits. Section 7 of Chapter II is the provision dealing with determination of market value. Section 7 reads:

(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 (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 paid to the Government.

(3) The market value of a 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 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.

Section 37 of Chap. IV deals with computation of fee for partition suit. Under Sub-section (1) in a suit for partition and separate possession of a share of joint family property or of property owned, jointly or in common, by a plaintiff who has been excluded from possession of such property, fee shall be computed on the market value of the plaintiff's share. Under Sub-section (2) in a suit for partition and separate possession of joint family property or property owned, jointly or in common, by a plaintiff who is in joint possession of such property, fixed fee shall be paid either as provided under Sub-section (i) if the plaint is presented before Munsiff Court or under Sub-section (ii) if presented before Sub Court or District Court. As respondent is claiming that he is in joint possession of the properties with petitioners and seek a decree for separation of the joint properties, only the fixed court fee need be paid as provided under Section 37(2). The valuation of such a suit shall be as provided under Section 53.

6. Section 53 of the Act reads:

(1) In a suit as to whose value for the purpose of determining the jurisdiction of courts, specific provision is not otherwise made in this Act or in any other law, value for that purpose and value for the purpose of computing the fee payable under this Act shall be the same.

(2) In a suit where fee is payable under this Act at a fixed rate, the value for the purpose of determining the jurisdiction of courts shall be the market value or where it is not possible to estimate it at a money value such amount as the plaintiff shall state in the plaint.

7. For suits where no specific provision is made in the Act or in any other law for the purpose of determining the jurisdiction of the court, the value for the purpose of determining the jurisdiction as well as computing the fee payable under the Act shall be the same. Under Sub-section (2) in a suit where a fixed fee is payable the value for the purpose of determining the jurisdiction of courts shall be the market value or where it is not possible to estimate it at a money value it is to be valued at such amount as the plaintiff pleads in the plaint. Therefore Sub-section (2) deals with two types of cases. The first category of cases is where it is possible to estimate the market value of the property. For the purpose of determining the jurisdiction of the court, the value has to be determined as the market value. The second category of case is where the value is not possible to be estimated at a money value. In such a case the plaint is to be valued at a money value as stated by the plaintiff in the plaint. But the market value can be determined only as provided under Section 7 of the Act. Sub-section (1) of Section 7 deals with market value of agricultural land. Under that provision market value shall be deemed to be 10 times the annual gross profits of such land where it is capable of yielding, less the assessment if any paid to the Government. Sub-section (2) is only applicable to agricultural lands and that too suits falling under either Section 25(a) 25(b) or 27 (a) or 29 or 30 or 37(1) or 37(3) or 38, 45 or 48. A suit falling under Section 37(2) does not come within the scope of Sub-section (2). Sub-section (3) deals with the market value of building. If rental value of the building has been entered in the register of local authority, the market value of the building shall be 10 times of such rental value. In all other cases the market value of the building is the actual market value of the building as on the date of the plaint. Sub-section (3A) which was subsequently inserted by Amendment Act 6 of 1991 makes the position absolutely clear. The market value of any property other than the agricultural. land falling under Sub-section (2) and building falling under Sub-section (3) shall be the value of the property that will fetch on the date of institution of the suit. Sub-section (4) provides that where the subject matter of the suit is only a restricted or

fractional interest in the 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 preparation 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 income from the property. Therefore in a suit for partition, if it comes under Sub-section (1) of Section 37, market value has to be assessed as provided under Sub-section (2) or (3). But if the suit comes under Sub-section (2) of Section 37, the property has to be valued as shown under Section 53. The valuation to be shown is the valuation of the share claimed by the plaintiff.

8. In Kunju Mohammed Kunju's case (supra) the learned Judge made the following observation which was relied on by Advocate Sri. Kodoth Sreedharan. It reads:

There is really an interesting question which arises incases under Section 53(2) of Kerala Court-Fees and Suits Valuation Act. The section merely says that the value for the purpose of determining the jurisdiction of Courts shall be the market value; of what is not madeclear. It can be the market value of the relief claimed or of the property to which the relief relates. If it is the market value of the relief claimed, there is considerable doubt as to whether the relief of partition claimed by a member who is already in joint possession is one which can be estimated at money value at all. There is authority for the proposition that all that is demanded by a plaintiff in joint possession of joint property when he seeks partition is the convenience of converting joint enjoyment into separate enjoyment. Such a convenience cannot be estimated in terms of money and perhaps Section 53(2) may itself bear the construction that in those cases the plaintiff is free to estimate the jurisdictional value as he likes.

After observing the same it has been made specifically clear as follows:

That question, however, does not arise for decision in the present case because even on the footing that the market value of the property must be the basis for computation of jurisdictional value, the plaintiff can reasonably come with his suit in the Munsiff Court.

This observation was considered another learned Judge in Gopalan Nambiar v. Bolakrishnan Nambiar 1972 KLT 1087 and held:

The decision relied on by the learned Munsiff no doubt contains a stray observation that it was doubtful whether the relief of partition claimed by a member who is already in joint possession is one which can be estimated at a money value at all. But, then the said observation was obiter as will be clear from a later observation in the same judgment to the effect that the question did not however arise 'for decision in the present case'. If the learned Judge who decided 1968 KLT 967 meant to lay down that the relief of partition in the case where a plaintiff who is in joint possession, claims separate possession is incapable of being valued in terms of money, then, with great respect 1 must say that I am unable to agree with the said proposition. The relief that is sought by a person who is in joint possession for partition is clearly one in respect of his share in the properties and what he seeks by way of relief in the suit is to have his share separately demarcated and possession transferred over to him. Therefore the relief clearly relates to his share of the properties and the jurisdictional value in that case must of course be the value of that share. I am unable to understand why the relief is incapable of valuation. The prayer of the plaintiff in such case would be to have his share separated and possession recovered from the other members who are in joint possession. It is not possible to hold that the relief in such a case cannot be estimated at a money value and it is clear that the second part of 8.53(2) cannot apply.

The identical question was considered by another learned single Judge in Maimu v. Beebi 1971 KLT 741 (supra). It was held that a suit for partition coming under Section 37(2) does not come under Section 7(2). It falls under Sub-section (4) of Section 7 and the value of the share claimed by the plaintiff in such a suit shall be the proportionate market value of that share and under Section 37(2) the fee payable depends on that value. It was held that under Section 53, in the absence of specific provision to the contrary value for the purpose of jurisdiction and value for the purpose of court fee shall be the same and the determination of the value shall be as provided under the Act. It was therefore held:

So that value has to be determined in accordance with the said provisions and the said value shal1 also be the value for the purpose of jurisdiction. Thus the market value of the plaintiff' s share determines the jurisdiction of the Court in a suit for partition falling under Section 37(2). The court is entitled under Section 19 of the Act to make an enquiry for the purpose of deciding whether the subject matter of the suit or other proceeding has been properly valued or whether fee paid is sufficient.

9. The suit is instituted for separation of the joint possession and allotment of the share of the respondent plaintiff. The market value of that property as well as the value of the share of the plaintiff is ascertainable. The determination of the market value could only be as provided under Section 7. As Sub-section (2) of Section 7 is not applicable, the market value cannot be 10 times of the annual gross profit of the lands, as shown by the respondent in Ext. Pl plaint. The market value could only fixed as provided under Section 3A.

10. The argument of learned Counsel appearing for respondent is that what is to be valued under Section 53(2) of the Act is the relief claimed in the plaint and the relief of separation of the joint property cannot be valued, is not sustainable. What is to be valued is the share of the plaintiff to be separated from the properties in the joint possession of the parties. For the purpose of determining the jurisdiction of the court, the value could only be the value of the share of the plaintiff claimed in the properties. When the value of the whole of the plaint schedule properties could be fixed and plaintiff is claiming a particular share, the value of that share is also determinable. To fix the total value of the properties, market value as provided under Section 7(3A) is to be fixed. Then (sic)ded under Section 7(4) the value of the share of the plaintiff is to be fixed. That (sic) be the proportionate market value of the share of the plaintiff. Sub-section 2 of Section 53 mandates that where a fixed court fee is payable, the value for the purpose of determining the jurisdiction of courts shall be the market value. The liberty granted to the plaintiff to estimate the money value and the provisions that the said value stated in the plaint shall be the value for the purpose of determining the jurisdiction of the court is applicable only if the market value of the share claimed in the plaint cannot be determined. When the plaint schedule properties claimed to be in joint

possession is capable of valuing and the share claimed in those properties could also be fixed, for the purpose of determining the jurisdiction only the market value of the share of the plaintiff could be looked into. That market value could only be fixed as provided under Sections 7(3 A) and 7(4). The properties cannot be valued as provided under Section 7(2) as a suit coming under Section 37(2) is excluded under that sub-section. Hence Ext.P3 order is unsustainable. Ext.P3 order is therefore quashed. The learned Munsiff is directed to decide the question afresh. Plaintiff is directed to file a schedule valuing the properties as provided under sub Section 3A of Section 7 showing the value of his share. Court below to determine the question of correctness of that valuation and settle the dispute on the pecuniary jurisdiction.

Writ Petition is disposed as above.

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