

Jamy Kuriakose Vs. Jomon Kuriakose

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Court : Kerala

Decided On : Sep-06-2002

Reported in : AIR2003Ker162; 2003(1)KLT411

Judge : K.A. Mohamed Shafi, J.

Acts : [Kerala Court Fees and Suits Valuation Act, 1959](#) - Sections 40

Appeal No. : C.R.P. No. 836/2001

Appellant : Jamy Kuriakose

Respondent : Jomon Kuriakose

Advocate for Def. : P.K. Shakkeela and; G. Unnikrishnan, Adv.

Advocate for Pet/Ap. : P.G. Parameswara Panicker and; P. Gopal, Adv.

Judgement :

ORDER

K.A. Mohamed Shafi, J.

1. The plaintiff in O.S. 304/1997 on the file of the Additional Sub Court, Kottayam is the revision petitioner. The suit was filed by the revision petitioner to set aside the sale deed No. 2283/1996 of Kidangoor Sub Registrar's Office on the grounds of fraud, undue influence, coercion etc. The plaintiff valued the suit at Rs. 82,000,

the value of the property shown in the sale deed sought to be set aside.

2. The 1st defendant filed LA. 181/98 under Section 12(2) of the Court Fees Act to direct the plaintiff to pay proper court fee. The lower court allowed the I.A. and directed the plaintiff to value the relief A claimed in the plaint at Rs. 5 lakhs and to pay court fee accordingly.

3. The fact that the suit is filed to set aside sale deed No. 2283/96 of Kidangoor Sub Registrar's Office for a consideration of Rs. 82,000 is not in dispute. The only question is what is the proper value of the plaint schedule property for payment of court fee in the suit. The plaintiff has valued the suit for the purpose of court fee at Rs. 82,000, the value of the property shown in the assignment deed.

4. Section 40(1) of the Court Fees Act reads as follows:

'In a suit for cancellation of a Decree for money or other property having a money value, or other document which purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest in money, movable or immovable property, fee shall be computed on the value of the subject-matter of the suit, and such value shall be deemed to be -

If the whole Decree or other document is sought to be cancelled, the amount or value of the property for which the Decree was passed or other document was executed. If a part of the Decree or other document is sought to be cancelled, such part of the amount or value of the property.*** **'

5. Interpreting the above provision of the Court Fees Act a Division Bench of this Court in the decision in Damodaran v. Parvathy (1972 KLT 774) has held that under Section 40(1) of the Court Fees and Suits Valuation Act, in suits for cancellation of document court fee payable is the market value of the property covered by the document.

6. In the subsequent decision in Vasudeva Rao v. Hari Menon (1981 KLT 763) a Division Bench of this Court has held that under Section 40 of the Court Fees and Suits Valuation Act, in suits to set aside sale deeds in respect of immovable property court fee has to be paid on market value of the property on the date of the

suit. In that judgment the Division Bench has observed as follows:

'The Decree sought to be set aside or the 'other document' required to be cancelled may not be for money but for other property having money value, movable or immovable. In such cases the plaintiff seeks to get rid of his liability in respect of that property under the Decree or 'other document' as the case may be. The value of the subject-matter of the suit here is the value of the property - not that mentioned in the Decree or 'other document' but actual value thereof or in other words, the market value as on the date of suit. 'Value' in this context means the just money-equivalent or the worth of the property in terms of the currency of the land, as on the date of suit.'

7. Therefore, it is clear that in order to set aside the assignment deed as prayed for in the plaint, the plaintiff-revision petitioner has to pay court fee on the market value of the property on the date of the suit and not on the consideration for the property shown in the document sought to be set aside. In the plaint the plaintiff has stated that the property covered as per the impugned assignment deed is worth Rs. 5 lakhs. In the written statement filed by the 2nd defendant in paragraph 5 he has contended that the allegation made in the plaint that the property is worth Rs. 5 lakhs when the sale deed was executed is baseless and the property was sold at the normal reasonable price then prevailing in the locality.

8. There is no evidence on record as to what was the market value of the property on the date of the suit. The contention that as the plaintiff himself has stated that the market value of the property on the date of the assignment deed sought to be cancelled is Rs. 5 lakhs, the same should be accepted as the market value of the property on the date of the suit, is not sustainable. The lower court has to conduct an enquiry and to fix the market value of the property on the date of suit for the purpose of court fee in this case.

9. Hence the impugned order is set aside and the matter is remanded to the lower court to conduct a fresh and proper enquiry regarding the market value of the property involved in the suit on the date of suit in accordance with the provisions of the Court Fees and Suits Valuation Act.

The C.R.P. is disposed of as above.

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