
(2006) 09 KL CK 0057

High Court Of Kerala

Case No: Writ Petition (C) No. 17564 of 2004

Ajaya Kumar

APPELLANT

Vs

Deepthi Krishnan

RESPONDENT

Date of Decision: Sept. 20, 2006

Acts Referred:

- Kerala Court Fees and Suits Valuation Act, 1959 - Section 42

Citation: (2006) 4 KLT 768

Hon'ble Judges: K.A. Abdul Gafoor, J

Bench: Single Bench

Advocate: V.N. Achuta Kurup and K. Harilal, for the Appellant; P.B. Suresh Kumar, for the Respondent

Final Decision: Dismissed

Judgement

K.A. Abdul Gafoor, J.

The petitioner, the plaintiff in C.S.No. 130/03 on the file of the Subordinate Judge, Kottarakkara, entered into an agreement (Ext.PI) for purchase of the property from the first defendant, who is a partner along with one Abdul Khader in K.K.Industries. The partnership has set up a crusher unit in the property concerned. The half share in the property and the industry entitled to the plaintiff was agreed to be sold as per Ext.P 1 agreement. The amount payable in terms of the agreement by the petitioner to the plaintiff is only Rs. 21.5 lakhs. The agreement was not performed. Therefore a suit was brought in for specific performance. The court fee was remitted based on the aforesaid amount payable by the petitioner. Objection was raised by the 1st defendant contending that the total value of the property to be conveyed is Rs. 1.3 crores and half right eligible to the 1st defendant comes to Rs. 65.7 lakhs. That being the value of the property, court fee ought to have been remitted on that amount, because in Ext.PI agreement, the amount payable by the petitioner was fixed as Rs. 21.5 lakhs, after adjusting the loan amount availed of from the Kerala Financial Coorporation and charge on the property was to the tune of Rs. 80 lakhs and interest accrued to the tune of Rs. 7 lakhs. The liquid cash

payable in terms of Ext.PI was agreed, after adjusting the loan amount repayable to the Kerala Financial Corporation with interest. The agreed price of the property includes cash payable. So, court fee ought to have been remitted on the entire consideration including the loan amount which is liable to be cleared off by the plaintiff, the petitioner, after the sale.

2. The court below found this contention sustainable and directed as per Ext.P3 to remit the court fee on the total amount of Rs. 67.5 lakhs, being half the value of the property.

3. This is challenged by the plaintiff/petitioner in this Writ Petition contending that in a suit for specific performance, the plaintiff need pay the court fee computed only based on the sale consideration to be passed on to the vendor of the property.

4. The court fee shall be computed in a suit for specific performance in terms of Section 42 of the Kerala Court Fees and Suits Valuation Act. The relevant clause is Clause A thereof. Section 42 and Clause (a) read as follows:

42. Suits for specific performance: In a suit for specific performance, whether with or without possession, fee shall be payable-- (a) in the case of a contract of sale, computed on the amount of the consideration.

5. Therefore, the point to be decided first is, what is the amount of consideration in terms of Ext.PI. Ext.PI agreement unequivocally states, as agreed to by both the parties, that:

6. It is the half of this property which is agreed to be sold to the petitioner as per Ext.PI. Consequently, the computation of court fee adopted by the court below, adding this amount as well, to the liquid cash payable is justified.

Writ Petition is accordingly dismissed.