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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

WEDNESDAY, THE 12TH DAY OF JUNE 2024 / 22ND JYAISHTA, 1946

OP(C) NO. 3120 OF 2018

AGAINST THE ORDER DATED 22.09.2018 IN I.A. NO.1094/2018 IN OS NO.36 OF 2017 OF MUNSIFF COURT, PALA

PETITIONER:

THOMAS BABY
AGED 69 YEARS
SON OF THOMAS, RESIDING IN MARYANN VILLA, 28/286-1A, VIKAS NAGAR, KADAVANTHARA, ERNAKULAM-682 020.

BY ADV
RAJEEV V.KURUP

RESPONDENTS:

1 JOJO V.GEORGE(DIED)
AGED 43 YEARS
SON OF GEORGE, VALIPLACKAL HOUSE, EDAPPADY KARA, BHARANANGANAM VILLAGE, MEENACHIL TALUK, KOTTAYAM-686 578.

2 FR. THOMAS MANNORAMPARAPIL,
AGED 74 YEARS
SON OF THOMAS, MARY MATHA VILLA, CHETTIMATTOM, KIZHATHADIYOOR KARA,LALAM VILLAGE, MEENACHIL TALUK, KOTTAYAM 686 575

3 ADDL.R3.NOBY TOM
AGED ABOUT 42 YEARS, W/O JOJO V. GEORGE, VALIPLAKKAL HOUSE, EDAPPADY, BHARANANGANAM VILLAGE,PALA- 686578.

4 ADDL.R4.GORDAN JOJO
AGED 15 , S/O JOJO V. GEORGE, VALIPLAKKAL HOUSE, EDAPPADY , BHARANANGANAM VILLAGE, PALA- 686578 REPRESENTED BY HIS GUARDIAN NOBY TOM AGED ABOUT 42 W/O JOJOV. GEORGE, VALIPLAKKAL HOUSE, EDAPPADY, BHARANANGANAM VILLAGE, PALA- 686578

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5 ADDL.R5.NILA MARIA JOJO
AGED 12 , D/O JOJOV.GEORGE, VALIPLAKKAL HOUSE, EDAPPADY , BHARANANGANAM VILLAGE, PALA-686578 REPRESENTED BY HER GUARDIAN NOBY TOM AGED ABOUT 42 W/O JOJOV.GEORGE, VALIPLAKKAL HOUSE, EDAPPADY, BHARANANGANAM VILLAGE, PALA- 686578.

6 ADDL.R6.NILE JOJO
AGED 9 S/O JOJOV. GEORGE, VALIPLAKKAL HOUSE, EDAPPADY, BHARANANGANAM VILLAGE, PALA-686578 REPRESENTED BY HIS GUARDIAN NOBY TOM AGED ABOUT 42 W/O JOJO V. GEORGE, VALIPLAKKAL HOUSE, EDAPPADY, BHARANANGANAM VILLAGE, PALA- 686578

7 ADDL.R7.JOE ANN CLARIS
AGED 6 D/O JOJO V. GEORGE, VALIPLAKKAL HOUSE, EDAPPADY , BHARANANGANAM VILLAGE, PALA - 686578 REPRESENTED BY HER GUARDIAN NOBY TOM AGED ABOUT 42 W/O JOJO V . GEORGE , VALIPLAKKAL HOUSE, EDAPPADY, BHARANANGANAM VILLAGE, PALA - 686578

[ADDITIONAL RESPONDENTS 3 TO 7 ARE IMPLEADED AS LRS OF DECEASED R1 VIDE ORDER DATED 7.11.2022 IN I.A.NO. 1/2021.]

BY ADVS.
LIJI.J.VADAKEDOM
V.RAJENDRAN (PERUMBAVOOR)
N.RAJESH
GOPAKUMAR P.

THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 12.06.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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“C.R.”

JUDGMENT

Ext.P7 order dismissing an application under Order 13 Rule 3 of the Code of Civil Procedure (for short 'the C.P.C.') is under challenge in this Original Petition.

2. The petitioner is the first defendant, and the respondents are the plaintiff and the second defendant respectively, in O.S. No.36/2017 on the files of the Munsiff Court, Pala (for short 'the trial court').

3. The suit was one for permanent prohibitory injunction restraining the defendants from interfering with the tapping of rubber trees standing in the plaint schedule property. According to the plaintiff, an agreement dated 06.01.2015 was executed between him on one part and the first defendant through the second defendant as power of attorney holder on the other part, permitting him to tap the rubber trees situated in the plaint schedule property belonging to the first defendant and his wife. The agreement

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was produced along with the plaint. The first defendant entered appearance and disputed the execution of the agreement. It is contended that the agreement is a concocted one made by the plaintiff in collusion with the second defendant.

4. The first defendant filed Ex.P4 application (I.A. No.1094/2018) at the trial court, invoking Order 13 Rule 3 of the C.P.C. to reject the agreement on the ground that it is a compulsorily registrable document and hence cannot be admitted into evidence. The trial court, after hearing both sides, dismissed the application as per Ext.P7 order. It is challenging the said order; this Original Petition has been preferred.

5. During the pendency of this Original Petition, the plaintiff/first respondent died, and his legal heirs were impleaded as additional respondents 3 to 7.

6. I have heard Sri. Rajeev V. Kurup, the learned counsel for the petitioner and Sri. N. Rajesh the learned counsel for additional respondents 3 to 7.

7. The plaintiff claims the right to tap 750 yielding rubber trees situated in the plaint schedule property belonging to the first defendant and his wife based on the unregistered agreement dated 06.01.2015. As per the agreement, the plaintiff was given the right to tap the rubber trees for 15 years for a consideration of Rs.10,00,000/- (Rupees Ten lakh only).

8. The first defendant sought to reject the agreement relying on Section 17(1)(d) and Section 49 of the Kerala Registration Act. Section 17 of the Act deals with the documents of which registration is compulsory and Section 49 deals with the effect of non-registration of documents required to be registered. Section 17(1)(c) says that non-testamentary instruments which acknowledge the receipt of payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any right, title or interest in immovable property is a compulsorily registrable document. Section 49(c) provides that no document required by Section 17 to be registered shall be

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received as evidence of any transaction affecting such property or conferring such power unless it has been registered. Even though the contention of the first defendant was based on Section 17(1)(c) of the Registration Act, the trial court adverted to Section 17(1)(d) of the Registration Act and found that the document is only a license, not a lease. It was further found that the agreement in question did not create any interest over immovable property and hence it is not compulsorily registrable.

9. The learned counsel for the petitioner submitted that a reading of the agreement would show that it creates interest or right over the immovable property on receipt of consideration and hence, it requires registration. Reliance was placed on ***Shantabai v. State of Bombay and Others*** [AIR 1958 SC 532 (Y 45 C 79)], ***Joseph v. Joseph Annamma*** (1979 KLT 322), ***Velayudhan Padmanabhan v. Thyagarajan*** [2011 (3) KLT 867], ***Santhakumari v. Raghavan Unni and Another*** (2014 KHC 715) and ***Pathumuthumma v. Khaja Moideen*** [2019 (3) KLT 265].

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On the other hand, the learned counsel for the respondents submitted that the subject matter of the agreement is not immovable property nor was any interest created in the immovable property as per the agreement. Instead, what was created was a simple right to collect latex from 750 rubber trees for a period of 15 years, and the latex can only be considered as a movable property. Hence, registration is not mandatory, submitted the counsel. He relied on Section 2(9) of the Registration Act.

10. As stated already, as per the agreement, the plaintiff was given the right to tap the rubber trees situated in the plaint schedule property for 15 years for a consideration of Rs 10,00,000/- (Rupees ten lakh only). Section 17(1)(c) says that non-testamentary instruments which acknowledge the receipt of payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest in immovable property is a compulsorily registrable document. The agreement acknowledges the receipt of

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consideration on account of the creation of rights or interest in the rubber trees situated in the plaint schedule properties. Thus, the crucial question is whether the rubber trees over which right or interest is created are immovable property.

11. Section 3 of the Transfer of Property Act defines immovable property thus:

> *"immovable property" does not include standing timber, growing crops or grass".*

12. Section 2(6) of the Registration Act defines immovable property thus:

> *"2(6). "immovable property" includes land, buildings, hereditary allowances, rights to ways, lights, ferries, fisheries or any other benefit to arise out of land, and things attached to the earth, or permanently fastened to anything which is attached to the earth, but not standing timber, growing crops or grass".*

13. The expression "immovable property" is also defined under S.3(26) of the General Clauses Act as under:

> *"3(26). "immovable property" shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth".*

Under Section 3 (26) of the General Clauses Act and Section 2(6) of the Registration Act, trees would be regarded as "immovable property" because it is a benefit that arises out of the land and because trees are attached to the earth. On the other hand, the Transfer of Property Act says in Section 3 that standing timber is not immovable property for the purposes of that Act and so does Section 2 (6) of the Registration Act. Therefore, trees (except standing timber, growing crops or grass) are immovable property.

14. None has a case that rubber trees would fall within the meaning of growing crops or grass. The question is whether the rubber tree would come within the meaning of standing timber. The distinction between 'standing timber' and 'tree' has been set out by the Supreme Court as early as 1958 in ***Shantabai*** (supra) in the following words:

> *"(29) Now, what is the difference between standing timber and a tree? It is clear that there must be a distinction because the Transfer of Property Act draws one in the definitions of "Immovable property" and "attached to the earth"; and it seems to me that the distinction must lie in the difference between a tree and*

timber. It is to be noted that the exclusion is only of "standing timber" and not of "timber trees".

(30) Timber is well enough known to be -- "wood suitable for building houses, bridges, ships, etc., whether on the tree or cut and seasoned." (Webster's Collegiate Dictionary).

Therefore, "standing timber" must be a true that is in a state fit for these purposes and, further a tree that is meant to be converted into timber so shortly that it can already be looked upon as timber for all practical purposes even though it is still standing. If not, it is still a tree because, unlike timber, it will continue to draw sustenance from the soil.

(31) Now, of course, a tree will continue to draw sustenance from the soil so long as it continues to stand and live; and that physical fact of life cannot be altered by giving it another name and calling it "standing timber". But the amount of nourishment it takes if it is felled at a reasonably early date, is so negligible that it can be ignored for all practical purposes and though, theoretically, there is no distinction between one class of tree and another, it the drawing of nourishment from the soil is the basis of the rule, as I hold it to be, the law is grounded, not so much on logical abstractions as on sound and practical commonsense. It grew empirically from instance to instance and decision to decision until a recognisable and workable pattern emerged, and here, this is the shape it has taken.

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> *(33) In my opinion, the distinction is sound. Before a tree can be regarded as "standing timber", it must be in such a state that, if cut, it could be used as timber, and when in that state, it must be cut reasonably early. The rule is probably grounded on generations of experience in forestry and commerce, and this part of the law may have grown out of that. It is easy to see that the tree might otherwise deteriorate and that its continuance in a forest after it has passed its prime might hamper the growth of younger wood and spoil the forest and, eventually, the timber market. But however that may be, the legal basis for the rule is that trees that are not cut continue to draw nourishment from the soil and that the benefit of this goes to the grantee."*

15. In ***Joseph*** (supra), a Single Bench of this Court held that if a tree is a growing tree, drawing sustenance from the soil, it is immovable property; where however it is to be cut soon, the amount of sustenance it will draw from the soil is negligible and is to be disregarded. In ***Pathumuthumma*** (supra), another Single Bench of this Court defined the meaning of the expression ‘standing timber’ and held that standing timber has to be understood in the sense a tree which has attained stoppage of process

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of vegetation and nourishment for further growth and the distinction principally lies on the question as to whether the process of vegetation was stopped or not and whether the parties have considered the same as stopped. If the answer is affirmative, it would fall under the expression 'standing timber', though there is scope for nourishment to the tree for a reasonable period till it is cut and removed. Otherwise, it would be a growing tree within the meaning of "immovable property". Further, when the parties have considered the tree as the one which has attained stoppage of process of vegetation, it would come under the ambit of 'movable property' though the parties have agreed to cut and remove the same within a reasonable time and there is scope for further nourishment till that time. In ***Velayudhan Padmanabhan*** (supra), yet another Single Bench of this Court took the view that granting of the right to take yield from jack trees and mango trees after getting its possession pursuant to an agreement requires registration inasmuch as trees are neither just 'timber' nor 'growing crops' and the

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transaction amounts to transfer of immovable property. Thus, growing and yielding rubber trees which continue to draw sustenance from the soil, and which have not attained stoppage of vegetation and nourishment for further growth cannot be regarded as standing timber. They must be regarded as trees.

16. A reading of the agreement would show that the right given to the plaintiff by the first defendant was to tap yielding rubber trees. They have not attained the stoppage of the process of vegetation and nourishment for further growth. They are growing trees. Income is generated from the yield. The trees do not perish after taking the yield once. There is no doubt that they would not fall under “standing timber” falls under Section 3 of the Transfer of Property Act. The rubber trees in the plaint schedule property indeed are trees and thus immovable property. Thus, the transaction evidenced by the agreement is one which requires registration under Section 17 of the Registration Act as it

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amounts to the creation of right or interest in respect of immovable property for consideration.

17. The trial court, relying on Section 2(9) of the Registration Act, found that the interest created as per the agreement is in respect of movable property and not in respect of immovable property. Section 2(9) of the Registration Act defines 'movable property' as including standing timber, growing crops and grass, fruit upon and juice in trees, and property of every other description, except immovable property. The trial court found that the latex is the juice of the rubber tree and inasmuch as the right given to the plaintiff is to draw latex from the rubber trees, the interest created as per the agreement is not on an immovable property but on a movable property and hence it requires no registration. I cannot subscribe to the said view. As stated already, a reading of the agreement would clearly show that the plaintiff was granted the right to take yield from the yielding rubber trees situated in the plaint schedule property. The interest is created on the said rubber trees

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which is an immovable property, as I have already indicated. For the simple reason that what is extracted from the yielding rubber trees is in the form of juice, it cannot be said that the interest is created with respect to the movable property. Since the agreement is a compulsorily registrable document, it cannot be received as evidence of any transaction affecting the immovable property comprised therein (Section 49 of the Registration Act).

18. Rule 3 of Order 13 C.P.C provides that the Court may, at any stage of the suit, reject any document that it considers irrelevant or otherwise inadmissible, recording the grounds of such rejection. Under the said provision, the Court is empowered to exercise discretion and reject an irrelevant or inadmissible document even before it is sought to be marked or proved at the trial of the case. It is true that the expression used in Rule 3 is 'may' and not 'shall'. However, if a document is inadmissible on the face of it, the court has to exercise its discretion and reject it so that leading irrelevant and inadmissible evidence at the time of

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trial can be avoided. [See ***Santhakumari*** (supra)]. Since the agreement in question was inadmissible in evidence for want of registration, the trial court ought to have rejected it exercising its discretion under Order 13 Rule 3 of C.P.C. Accordingly, Ext.P7 order is set aside. Ext.P4 stands allowed.

This Original Petition is disposed of as above.

Sd/-

DR. KAUSER EDAPPAGATH

JUDGE

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APPENDIX OF OP(C) 3120/2018

PETITIONER'S EXHIBITS

EXHIBIT P1	**COPY OF THE PLAINT NO. 36/2017 OF THE MUNSIFF COURT PALAI.**
EXHIBIT P2	**COPY OF THE AGREEMENT DATED 6-1-2015**
EXHIBIT P3	**COPY OF THE WRITTEN STATEMENT IN OS 36/2017**
EXHIBIT P4	**COPY OF IA 1094/2018 IN OS 36/2017 OF THE MUNSIFF COURT PALAI**
EXHIBIT P5	**COPY OF THE PROOF AFFIDAVIT IN OS 36/2017 OF THE MUNSIFF COURT PALAI**
EXHIBIT P6	**COPY OF THE OBJECTION IS OS 36/2017 OF THE MUNSIFF COURT PALAI**
EXHIBIT P7	**COPY OF THE ORDER DATED 22-09-2018 ON IA 1094/2018 IN OS 36/2017 OF THE MUNSIFF COURT, PALA**

RESPONDENTS' EXHIBITS: NIL