

E.Kabeer vs Santhosh

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Court : Kerala

Decided On : Jul-31-2023

Judge : Honourable Mr. Justice P.Somarajan

Appeal No. : CRP/81/2023

Appellant : E.Kabeer

Respondent : Santhosh

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.SOMARAJAN
MONDAY, THE 31ST DAY OF JULY 2023 / 9TH SRAVANA, 1945
AGAINST THE ORDER DATED 24-01-2023 IN O.S.NO.236/2017 OF
MUNSIFF COURT, MAVELIKARA REVISION
PETITIONERS/DEFENDANTS 4 AND 5: 1 E.KABEER, AGED 66
YEARS, S/O.ILLYAS, THYPARAMBIL, VADAIKKAL,
SANADHANAPURAM P.O., ALAPPUZHA DISTRICT, PIN - 688 003 2
SELVANSON NETTO, AGED 58 YEARS, A.S.I OF POLICE, (RETIRED)
KAYAMKULAM POLICE STATION, ALAPPUZHA DISTRICT, PIN - 690
502 BY ADVS. R.REJI M.V.THAMBAN THARA THAMBAN B.BIPIN
ARUN BOSE RESPONDENTS/PLAINTIFFS 1 TO 3/DEFENDANTS 1, 2,

3, 6 AND 7: 1 SANTHOSH, AGED 43 YEARS, 2 SATHEESH.V, AGED 39 YEARS, 3 SUMESH KUMAR, AGED 45 YEARS,

4 STATE OF KERALA, REPRESENTED BY THE CHIEF SECRETARY TO KERALA GOVERNMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM., PIN - 695 001 5 DEPARTMENT OF HOME, REPRESENTED BY HOME SECRETARY, GOVERNMENT OF KERALA, SECRETARIAT, THIRUVANANTHAPURAM., PIN - 695 001 6 K.HARIKRISHNAN, AGED 56 YEARS, S/O KARUNAKARAN NAIR (LATE) (DY.S.P OF POLICE), REVATHY, ELIPPAKULAM (PO), ALPAUZHA., PIN - 690 503 7 BABU, AGED 51 YEARS, S/O KOCHU PAPPU, THATTAVAZHIYL VEEDU, NADAVCKAVU MURI, PERINGALA VILLAGE, CHETTIKULANGARA, KAYAMKULAM, ALAPUZHA DISTRICT., PIN - 690 106 8 SURESH, AGED 58 YEARS, S/O KOCHU PAPPU, THATTAVAZHIYIL VEEDU, NADAVCKAVU MURI, PERINGALA VILLAGE, CHETTIKULANGARA, KAYAMKULAM, ALAPUZHA DISTRICT., PIN - 690 106

BY ADV C.R.SANISH - FOR R2 & R3 OTHER PRESENT: GP SRI UNNIKRISHNAN S - FOR R4 & R5 THIS CIVIL REVISION PETITION HAVING COME UP FOR ADMISSION ON 31.07.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER

The question of territorial jurisdiction was taken up as a preliminary issue and answered the same in favour of the plaintiffs, against which the defendant No.4 and 5 came up in revision. It is pertaining to a suit for damages on account of malicious prosecution. The learned Munsiff found that, since major portion of malicious prosecution was conducted and culminated in acquittal at the Judicial First Class Magistrate Court, Mavelikkara, the Munsiff Court, Mavelikkara will have the territorial jurisdiction to deal with the suit. The view and the finding rendered by the Munsiff is quite against the law in force and hence erroneous, cannot be sustained. The prosecution was originally initiated before the Judicial First Class

Magistrate Court, Kayamkulam. Subsequently, it was transferred to the Court at Mavelikkara. That does not mean that there is change of territorial jurisdiction in so far as a suit of civil nature, based on allegation of malicious prosecution. The cardinal principle that the cause of action for the malicious prosecution would originate only after culmination of criminal trial will not make any change in the territorial jurisdiction of civil court. Transfer of criminal case from the Judicial First Class Magistrate Court, Kayamkulam to some other court would not take away the original cause of action which had arisen for malicious prosecution and the acquittal of accused shall not be read as cause of action for civil suit based on malicious prosecution, but should be read as a condition precedent to maintain such suit. Hence, the

plaint ought to have been returned under Order

VII Rule 10 C.P.C.. Hence ordered accordingly. The plaint shall be re-submitted before the court having jurisdiction within fifteen days from today. The C.R.P. will stand disposed of accordingly. Sd/- P.SOMARAJAN JUDGE rkr-31/07 APPENDIX OF CRP 81/2023 RESPONDENT ANNEXURES Annexure-R1 True copy of Amendment Petition bearing No.IA Mavelikara //TRUE COPY// P.A.TO JUDGE

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