

Jayasree Divakaran vs Sunilkumar

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Court : Kerala

Decided On : Dec-01-2023

Judge : Honourable Mr. Justice P.Somarajan

Appeal No. : OP(C)/2662/2023

Appellant : Jayasree Divakaran

Respondent : Sunilkumar

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.SOMARAJAN
FRIDAY, THE 1st DAY OF DECEMBER 2023 / 10TH AGRAHAYANA,
1945 OP(C) NO. 2662 OF 2023 AGAINST THE ORDER DATED
15.11.2023 IN I.A.No.8/2023 IN OS PETITIONER/DEFENDANT:
JAYASREE DIVAKARAN, AGED 58 YEARS, W/o THAYAVALLIYIL
DIVAKARAN, BY ADVS. P.A.ABDUL JABBAR MUHAMMED SHAFFI
T.S.ABDUL KHADER RESPONDENT/PLAINTIFF: SUNILKUMAR,
AGED 53 YEARS, S/o KATTUPARAMBIL APPU, THIS OP (CIVIL)
HAVING COME UP FOR ADMISSION ON 01.12.2023, THE COURT ON
THE SAME DAY DELIVERED THE FOLLOWING: OP(C) No.2662 of
2023 2

JUDGMENT

Exhibit P7 order is under challenge. It is an

order passed by the trial court on an application

submitted by the defendant for sending the disputed handwriting of a cheque for expert opinion. But, it is a case wherein the signature affixed as that of the defendant was admitted. It is upon the plaintiff to prove the due execution of the cheque in question and the initial burden always lies on the plaintiff and not

on the defendant. Further, the present application was submitted during the course of examination of PW1 as a witness to the case. Necessarily, the order passed by the trial court rejecting the application under Ext.P7 deserves no interference. There is no reason for admitting the case. Hence, the original petition will

stand dismissed in limine. The observation made OP(C) No.2662 of 2023 3 regarding the availability of presumption will stand removed. The Original petition will stand dismissed accordingly. Sd/- P.SOMARAJAN JUDGE DMR/- OP(C) No.2662 of 2023 4 APPENDIX OF OP(C) 2662/2023 PETITIONER'S EXHIBITS Exhibit- P1 TRUE COPY OF ORIGINAL PLAINT DATED 11.04.2019 FILED IN O.S. NO.427/2019. Exhibit- P2 TRUE COPY OF THE WRITTEN STATEMENT DATED 08.12.2021 FILED IN O.S. NO. 427/2019. Exhibit-P3 TRUE COPY OF THE AMENDED PLAINT FILED IN Exhibit-P4 TRUE COPY OF THE SAID ADDITIONAL WRITTEN STATEMENT FILED IN O.S. NO. 427/2019. Exhibit-P5 TRUE COPY OF THE I.A. NO. 8/2023 FILED IN Exhibit-P6 TRUE COPY OF THE OBJECTION FILED BY THE RESPONDENT IN I.A. NO. 8/2023. Exhibit-P7 TRUE COPY OF THE ORDER DATED 15.11.2023 IN I.A. NO. 8/2023. Exhibit-P8 TRUE COPY OF THE JUDGMENT DATED 09.10.23 IN O.P. (C) 2071/23. // TRUE COPY // P.A. TO JUDGE

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