

Saly Jose, vs M.J.Mathew,

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Court : Kerala

Decided On : Jan-04-2022

Judge : Honourable Mr. Justice a. Badharudeen

Appeal No. : OP(C)/1/2022

Appellant : Saly Jose,

Respondent : M.J.Mathew,

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE A. BADHARUDEEN
TUESDAY, THE 4TH DAY OF JANUARY 2022 / 14TH POUSHA, 1943
OP(C) NO. 1 OF 2022 AGAINST THE ORDER IN IA 7/2021 IN OS
50/2016 OF SUB COURT, MUVATTUPUZHA
PETITIONERS/PETITIONERS/DEFENDANTS IN THE SUIT: 1 SALY
JOSE, AGED 60 YEARS, W/O.JOSEPH P.M @ JOSE, PULLEN
HOUSE, 2 ANSON JOSE, AGED 39 YEARS, S/O. JOSEPH P.M @
JOSE, PULLEN HOUSE, 3 BENSON JOSE, AGED 36 YEARS, S/O.
P.M. JOSEPH @ JOSE, PULLEN HOUSE, BY ADVS.
SRI.A.T.ANILKUMAR SMT.V.SHYLAJA
RESPONDENT/RESPONDENT/PLAINTIFF IN OS: M.J.MATHEW,

AGED 66 YEARS, MAVUNKAL HOUSE, THATTAMPALLY P.O, MULLAKCAKAL VILLAGE, AMABALAPUZHA TALUK, PIN-688 561, REPRESENTED BY HIS POWER OF ATTORNEY HOLDER, SHIJUMON KURIAN, S/O. KURIAN, AGED 46 YEARS, KUMARASSARIYIL HOUSE, MANJOOR VILLAGE, ERAVIMANGALAM KARA, VAIKOM TALUK, PIN-686 141. THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 04.01.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Ext.P6 order passed in I.A.No.7/2021 in O.S.No.50/2016 on the file of Sub Court, Muvattupuzha is under challenge in the Original Petition filed under Article 227 of the Constitution of India.

2. Ext.P5 is the copy of application filed by the petitioners herein to get expert opinion. The prayer in Ext.P5 is not at all legible or clear. The same as such is extracted below:

it is prayed that this Honourable Court may be pleased to make available or produce the cheque number 019736 filed as Exhibit A2 by PW1 witness proof affidavit and Signature in the proof affidavit of PW3 done by Mr.Francis as a witness and make it available for scrutiny of expert Government Forensic Department, Thiruvananthapuram.

3. The learned Sub Judge addressed the contention raised by the defendants, who are petitioners herein, in the light of the materials available and the learned Sub Judge found that the application could not be allowed during the final stage of trial so as to protract the trial in a case of 2016. Going by the order, the learned Sub Judge also imposed Rs.3,000/- as cost to be paid by the defendants to the plaintiff.

4. I have perused the order and prayer in Ext.P5 petition. Though the prayer in Ext.P5 itself is meaningless and confusing, the

learned counsel for the petitioners argued that there is subtle difference in between the signature put by PW3 in Exts.P3 (agreement) and P4 (proof affidavit). Therefore, expert opinion to find the genuineness of the signature of PW3 in Ext.P3 is necessary. In fact, it is a matter that the petitioners can very well argue before the trial court at the time of final hearing to decide the genuineness of the agreement. At present, I could not find any

arbitrariness or perversity in the order

passed by the learned Sub Judge. Therefore, no interference is warranted in the impugned order. In consideration of the facts and circumstances of the case, Rs.3,000/- ordered as cost by the learned Sub Judge stands set aside.

This Original Petition is disposed of, accordingly. Sd/- A.BADHARUDEEN, JUDGE. ww APPENDIX OF OP(C) 1/2022 PETITIONERS' EXHIBITS: EXHIBIT P1 TRUE COPY OF THE PLAINT IN O.S. NO. MUVATTUPUZHA, DATED 04.10.2016. EXHIBIT P2 TRUE COPY OF THE WRITTEN STATEMENT IN OS NO.50/2016 ON THE FILE OF THE SUB COURT, MUVATTUPUZHA. EXHIBIT P3 TRUE COPY OF THE AGREEMENT DATED 22.08.2015. EXHIBIT P4 TRUE COPY OF THE PROOF AFFIDAVIT IN OS

NO.50/2016 ON THE FILE OF THE SUB COURT, MUVATTUPUZHA OF THE 3RD WITNESS IN THE WITNESS LIST DATED 20.10.2021. EXHIBIT P5 TRUE COPY OF THE APPLICATION NO.7/2021 IN OS NO. 50/2016 ON THE FILE OF SUB COURT, MUVATTUPUZHA, DATED 07.10.2021. EXHIBIT P6 TRUE COPY OF THE ORDER IN IA NO. SUB COURT MUVATTUPUZHA DATED 18.11.2021.

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