

Anto vs Afsal

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Court : Kerala

Decided On : Mar-10-2022

Judge : Honourable Mr. Justice a. Badharudeen

Appeal No. : OP(C)/476/2022

Appellant : ANTO

Respondent : AFSAL

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE A. BADHARUDEEN
THURSDAY, THE 10TH DAY OF MARCH 2022 / 19TH PHALGUNA,
1943 OP(C) NO.476 OF 2022 AGAINST THE ORDER IN IA 2934/2019
IN OS 67/2015 OF SUB COURT, IRINJALAKUDA

PETITIONER/DEFENDANT: ANTO AGED 62 YEARS
S/O.VELATHIPARAMBIL LONAPPAN, VETTUKADAVU DESOM, EAST
CHALAKKUDY VILLAGE, CHALAKKUDY TALUK. BY ADVS. RAJESH
VIJAYAN SIKHA S.NAIR LISMA JOSHWA RESPONDENT/PLAINTIFF:
AFSAL AGED 37 YEARS, S/O. NALAKATH KHADARMON, ALUMBADI
DESOM, GURUVAYUR VILLAGE, CHAVAKKAD TALUK, PIN - 680101.

THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 10.03.2022, ALONG WITH OP(C).480/2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: O.P.(C) Nos.476& 480/2022 2

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE A. BADHARUDEEN
THURSDAY, THE 10TH DAY OF MARCH 2022 / 19TH PHALGUNA,
1943 OP(C) NO. 480 OF 2022 AGAINST THE ORDER IN IA 2958/2019
IN OS 174/2015 OF SUB COURT, IRINJALAKUDA
PETITIONER/DEFENDANT: ANTO, AGED 62 YEARS S/O.
VELATHIPARAMBIL LONAPPAN, VETTUKADAVU DESAM, EAST
CHALAKKUDY VILLAGE, CHALAKKUDY TALUK.

BY ADVS. RAJESH VIJAYAN SIKHA S.NAIR LISMA JOSHWA
RESPONDENT/PLAINTIFF: BINU, AGED 42 YEARS S/O. MUKALEL ALEX,
KEEZHMADU DESOM AND VILLAGE, ALUVA, 683 105. THIS OP (CIVIL)
HAVING COME UP FOR ADMISSION ON 10.03.2022, ALONG WITH
OP(C).476/2022, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING: O.P.(C) Nos.476& 480/2022 3

COMMON JUDGMENT

The order in I.A.No.2934 of 2019 in O.S.No.67 of 2015 on the file of the Sub Court, Irinjalakuda is under challenge in O.P.(C) No.476 of 2022 filed by the defendant in the above case.

2. The same petitioner has filed O.P.(C) No.480 of 2022 aggrieved by the order in I.A.No.2958 of 2019 in O.S.No.174 of 2015 pending before the Sub Court, Irinjalakuda.

3. Heard the learned counsel on both sides.

4. The respondent in O.P.(C) No.476 of 2022 instituted suit as

O.S.No.67 of 2015 claiming realisation of money to the tune of Rs.15,00,000/- alleged to be borrowed by the petitioner herein. Similarly one Binu who is the respondent in O.P.(C) No.480 of 2022 had filed O.S.No.174 of 2015 before the Sub Court, Irinjalakuda wherein he had put up a case that the petitioner herein borrowed Rs.25,00,000/- from him and executed cheques in discharge of the said transaction. The petitioner herein filed written statements in both suits and admitted the signatures in the cheques. Thereafter, the petitioner herein filed two separate petitions before the trial court for comparing the handwriting in both cheques to prove that the same O.P.(C) Nos.476& 480/2022 4 was written by one and the same person.

5. But, the learned Munsiff after having apprised the

contention based on the objection filed by the other side, dismissed the applications by separate orders. It has been observed by the trial court that the contention raised by the petitioner to the effect that he had denied the execution of the said cheques and passing of consideration therein. etc. are against the pleadings in the written statement where signatures in the cheques were admitted.

6. I have perused the prayers in both petitions.

7. The prayers therein are to send both cheques together for

comparison to ascertain only one point as to whether both cheques were written by one and the same person. However, nothing stated in the petitions as regards to the author of the said handwritings. Moreover the petitioner is not aware as of now also, who is the person wrote the cheques, for collecting his specimen signatures for comparing the same. Thus it is difficult to compare two documents each other, without getting sufficient number of specimen signatures of the person who alleged to have wrote it. Most importantly the plaintiffs in both suits also not stated who had written the cheques. O.P.(C) Nos.476& 480/2022 5 Be it so, if it is proved that both cheques were written by one and the same person without the author's identity, then also no useful purpose could be achieved. In view of the matter, no purpose will be served in allowing the petitions. Therefore, the learned Munsiff rightly dismissed both the applications. The said orders do not suffer any

arbitrariness, perversity or illegality. Therefore, these Original Petitions are dismissed. Sd/- A.BADHARUDEEN JUDGE csl O.P.(C) Nos.476& 480/2022 6 APPENDIX OF OP(C) 480/2022 PETITIONER'S EXHIBITS Exhibit P1 TRUE COPY OF THE PLAINT IN O.S. NO. IRINJALAKKUDA. Exhibit P2 TRUE COPY OF THE WRITTEN STATEMENT FILED BY THIS PETITIONER. Exhibit P3 TRUE COPY OF THE PETITION FILED UNDER SECTION 151 OF CIVIL PROCEDURE CODE AND SECTION 45 OF THE EVIDENCE ACT. Exhibit P4 TRUE COPY OF THE COUNTER IN O.S. NO. Exhibit P5 TRUE COPY OF THE ORDER IN I.A. NO. 04.12.2021 OF THE COURT OF SUB JUDGE, IRINJALAKKUDA. O.P.(C) Nos.476& 480/2022 7 APPENDIX OF OP(C) 476/2022 PETITIONER'S EXHIBITS Exhibit P1 TRUE COPY OF THE PLAINT IN O.S.N O. 67/2015 ON THE FILE OF THE SUB COURT, IRINJALAKKUDA. Exhibit P2 TRUE COPY OF THE WRITTEN STATEMENT FILED BY THIS PETITIONER. Exhibit P3 TRUE COPY OF THE PETITION FILED UNDER SECTION 151 OF CIVIL PROCEDURE CODE AND SECTION 45 OF THE EVIDENCE ACT. Exhibit P4 TRUE COPY OF THE COUNTER IN O.S. NO. Exhibit P5 TRUE COPY OF THE ORDER IN IA NO. 2934/2019 IN O.S.NO. 67/2015 DATED 04.12.2021 OF THE COURT OF SUB JUDGE, IRINJALAKKUDA.

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