

Anto vs Afsal

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Court : Kerala

Decided On : Jun-06-2022

Judge : Honourable Mr. Justice a. Badharudeen

Appeal No. : OP(C)/840/2022

Appellant : ANTO

Respondent : AFSAL

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE A. BADHARUDEEN
MONDAY, THE 6TH DAY OF JUNE 2022 / 16TH JYASHTA, 1944
OP(C) NO. 840 OF 2022 AGAINST THE ORDER DATED 23.03.2022 IN
I.A.NO.6/2022 IN OS PETITIONER/PETITIONER/DEFENDANT: ANTO,
AGED 62 YEARS, SON OF VELATHIPARAMBIL LONAPPAN,
RESIDING AT VETTUKADAVU DESOM, EAST CHALAKUDY,
CHALAKUDY TALUK, THRISSUR DISTRICT, PIN - 680307. BY ADVS.
K.JAGADEESH V.RENJU RESPONDENT/RESPONDENT/PLAINTIFF:
AFSAL, AGED 37 YEARS, SON OF NALAKATHU KHADARMON,
ALUMPADI DESOM, GURUVAYOOR VILLAGE, CHAVAKKAD TALUK,
THRISSUR DISTRICT - 680101. THIS OP (CIVIL) HAVING COME UP

FOR ADMISSION ON 19.05.2022, THE COURT ON 06.06.2022
DELIVERED THE FOLLOWING: O.P(C).No.840/2022 2

A. BADHARUDEEN, J.

===== O.P(C).No.840 of 2022
===== Dated this the 6th day of
June, 2022

JUDGMENT

The defendant in O.S.67/2015 on the file of Sub Court, Irinjalakuda impugns order dated 23.03.2022 in I.A.No.6/2022 in the above case arraying the plaintiff as the respondent.

2. Heard the learned counsel for the petitioner on admission.

3. I.A.No.6/2022 is one filed by the defendant in the above

Suit under Section 45 of the Evidence Act with prayer to forward the Suit documents (cheques) in O.S.No.67/2015 and O.S.No.174/2015, alleged to be in the handwriting of the defendant for expert opinion with his admitted signatures to prove that the O.P(C).No.840/2022 3 defendant had not written anything in the cheques and the cheques were one obtained by threat and fear.

4. The learned counsel for the petitioner would submit that

during examination of PW1, PW1 categorically given evidence that the entries in the cheques were written by the defendant in the case on hand, where the defendant emphatically denied that he had not written the cheques.

5. It is submitted further that, earlier, the petitioner filed

O.P(C).No.476/2022 before this Court for sending the cheques in the above Suit for expert opinion and this Court dismissed the said application as per judgment dated 10.03.2022, holding that nothing stated in the petition as regards to the author of the said handwriting.

6. According to the learned counsel for the petitioner since

PW1 specifically asserted that the defendant had written the above cheques, it is necessary for the defendant to prove that the cheques O.P(C).No.840/2022 4 were not written by the defendant and for which the expert opinion is necessary.

7. In fact, this is a Suit of the year 2015 where the

defendant filed written statement as early on 25.09.2015. In the written statement, it was contended that the above cheques were obtained after threatening the defendant and the plaintiff in O.S.No.67/2015 entered the amount and other details of the cheques and filed O.S.No.67/2015 and O.S.No.174/2015. But when the case was listed initially, I.A.No.2934/2019 was filed seeking expert opinion and when the same was dismissed by the trial court, it was challenged before this Court and the said challenge was negatived by this Court. It was after recording evidence, the present petition was filed. In the respective complaints, the plaintiff raised specific contention that the cheques were executed by the defendant after receiving the amount, as contended. Thus it appears that the petitioner filed the present application after start of trial in a much belated stage and therefore, O.P(C).No.840/2022 5 the intention can only be to drag the proceedings and the same cannot be justified. In view of the above factual circumstances, the Original Petition is found to be devoid of any merits and is accordingly dismissed. Sd/- (A. BADHARUDEEN, JUDGE) rtr/ APPENDIX OF OP(C) 840/2022 PETITIONER'S EXHIBITS Exhibit P.1 TRUE PHOTOSTAT COPY OF THE COMPLAINT IN O.S.NO.67 OF 2015 OF THE SUB COURT, IRINJALAKUDA DATED "MARCH, 2015". Exhibit.P.2 TRUE PHOTOSTAT COPY OF THE WRITTEN

STATEMENT FILED BY THE DEFENDANT IN O.S.NO.67 OF 2015 OF THE SUB COURT IRINJALAKUDA DATED 25-9-2015. Exhibit.P.3 TRUE PHOTOSTAT COPY OF THE JUDGMENT OF THIS HONOURABLE COURT IN O.P(C) NO.476 OF 2022 DATED 10-3-2022. Exhibit.P.4 TRUE PHOTOSTAT COPY OF THE CROSS EXAMINATION OF THE RESPONDENT AS PW1 IN O.S.NO.67 OF 2015 DATED 17-3-2022. Exhibit.P.5 TRUE PHOTOSTAT COPY OF THE AFFIDAVIT AND PETITION FILED AS I.A.NO.6 OF 2022 IN O.S.NO.67 OF 2015 OF THE SUB COURT ,IRINJALAKUDA DATED 19-3-2022. Exhibit.P.6 TRUE

PHOTOSTAT COPY OF THE OBJECTION FILED BY THE RESPONDENT DATED 21-3-2022. Exhibit.P.7 TRUE PHOTOSTAT COPY OF THE ORDER IN I.A.NO.6 OF 2022 IN O.S.NO.67 OF 2015 OF THE SUB JUDGE, IRINJALAKUDA DATED 23-3- 2022.

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