

Pradeep, vs Indira Charitable Trust,

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Court : Kerala

Decided On : Mar-31-2021

Judge : Honourable Mr.Justice T.V.Anilkumar

Appeal No. : OP(C)/686/2021

Appellant : Pradeep,

Respondent : Indira Charitable Trust,

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE T.V.ANILKUMAR
WEDNESDAY, THE 31ST DAY OF MARCH 2021 / 10TH CHAITHRA,
1943 OP(C).No.686 OF 2021 IN I.A.NO.1139/2018 IN O.S.NO.73/2018
OF 2ND ADDITIONAL SUB COURT,TRIVANDRUM PETITIONERS/
PETITIONER/PLAINTIFF: 1 PRADEEP, AGED 43 YEARS, S/O.
KARUNAKARAN, PROPRIETOR, SMERA CONSTRUCTION,
PUTHENPURA HOUSE, MELKULANGARA, VAYAKKAL P.O.,
KOTTARAKKARA, KOLLAM-691 532. 2 S.KRISHNA KUMAR, AGED 42
YEARS, S/O. SASIKUMARAKURUP, CHIRAYATH, LAKSHMI
VILASAM, PADINJATTINKARA, KOTTARAKKARA-691 506. BY
ADVS.SRI.G.KRISHNAKUMAR SRI.B.S.SURAJ KRISHNA

RESPONDENTS/DEFENDANTS:

1 INDIRA CHARITABLE TRUST, A REGISTERED CHARITABLE TRUST, HAVING IT'S ADMINISTRATIVE AND REGISTERED OFFICE AT RAJADHANI BUILDINGS, EAST FORT, THIRUVANANTHAPURAM-695 023, REPRESENTED BY ITS CHAIRMAN AND MANAGING TRUSTEE DR. BIJU RAMESH, AGED 54 YEARS, S/O. RAMESH, RAJADHANI BUILDINGS, EAST FORT, THIRUVANANTHAPURAM-695 023. 2 DR.BIJU RAMESH, AGED 54 YEARS, S/O. RAMESH, CHAIRMAN AND MANAGING TRUSTEE, INDIRA CHARITABLE TRUST, RAJADHANI BUILDINGS, EAST FORT, THIRUVANANTHAPURAM-695 023. 3 RANI BIJU, AGED 49 YEARS, W/O. DR. BIJU RAMESH, MEMBER SECRETARY, INDIRA CHARITABLE TRUST, RAJADHANI BUILDINGS, EAST FORT, THIRUVANANTHAPURAM-695 023. -:2:-

4 RESHMA RAMESH, AGED 28 YEARS D/O. DR. BIJU RAMESH, MEMBER INDIRA CHARITABLE TRUST, RAJADHANI BUILDINGS, EAST FORT, THIRUVANANTHAPURAM-695 023. 5 MEGHA RAMESH, AGED 26 YEARS D/O. DR. BIJU RAMESH, MEMBER INDIRA CHARITABLE TRUST, RAJADHANI BUILDINGS, EAST FORT, THIRUVANANTHAPURAM-695 023. THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 31.03.2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: -:3:- Dated this the 31st day of March,2021

J U D G M E N T

I heard the learned counsel for the petitioners, who are the plaintiffs in O.S.No.73/2018 on the file of IInd Sub Court, Thiruvananthapuram and the respondents/defendants therein.

2. The challenge raised in this original petition is with respect to the legality of Ext.P8 proceedings dated 01.03.2021 passed by the court below whereby the suit was ordered to be transferred to commercial court under Section 15 of the

Commercial Courts Act, 2015. Consequently, I.A.No.1139/2018 which is an application for attachment before judgment was also transmitted to the transferee commercial court.

3. The grievance expressed by the learned

counsel for the petitioners is that the subject matter of the suit is not cognizable by a commercial court and the dispute between parties is one which requires to be tried by IIInd Additional Sub Court, Thiruvananthapuram.

4. The learned counsel for the respondents -:4:- submitted that the dispute on hand is not a commercial dispute cognizable by a commercial court and therefore, the order passed by the court below is not legal.

5. The learned counsel appearing on both sides therefore, requested this Court to pass an

order setting aside Ext.P8 proceedings dated

01.03.2021. In the result, original petition is allowed setting aside the order dated 01.03.2021 passed by the court below transferring the suit to the commercial court and it is called upon to decide I.A.No.1139/2018 after hearing the parties on either side and in accordance with law as expeditiously as possible. All pending interlocutory applications will stand closed. Sd/- T.V.ANILKUMAR,JUDGE DST //True copy/ P.A.To Judge -:5:- APPENDIX PETITIONERS' EXHIBITS: EXHIBIT P1 TRUE COPY OF THE PLAINT IN O.S.NO.73/2018 ON THE FILES OF THE 2ND ADDL. SUB COUT, THIRUVANANTHAPURAM. EXHIBIT P2 TRUE COPY OF THE IA NO.1139/2018 IN OS NO.73/2018 ON THE FILES OF THE 2ND EXHIBIT P3 TRUE COPY OF THE COUNTER AFFIDAVIT FILED BY THE 2ND RESPONDENT/2ND DEFENDANT ON THE FILES OF THE 2ND EXHIBIT P4 TRUE COPY OF THE PROOF AFFIDAVIT FILED BY THE PLAINTIFFS IN OS NO.73/2018 ON THE FILES OF THE 2ND ADDL. SUB COURT, EXHIBIT P5 TRUE COPY OF THE IA NO.1/2020 IN OS EXHIBIT P6 TRUE COPY OF THE PRINT OUT TAKEN FROM

E-COURT SERVICE WITH REGARD TO THE PROCEEDINGS IN OS NO.73/2018 ON THE FILES OF THE 2ND ADDL. SUB COUT, EXHIBIT P7 TRUE COY OF THE COMMON JUDGMENT DATED 7.1.2020 IN OP(C) NO.1178/2020 AND EXHIBIT P8 TRUE COPY OF THE PRINT OUT OF THE PROCEEDINGS IN OS 73/2018 TAKEN FROM E-COURT SERVICE. RESPONDENTS' EXHIBITS: NIL

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