

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE S.S.SATHEESACHANDRAN

TUESDAY, THE 31ST DAY OF JANUARY 2012/11TH MAGHA,1933

O.P.C.No. 345 of 2012 (O)

IN O.S.NO.135/2006 of SUB COURT, MANJERI

PETITIONER:-

P.K.VELAYUDHAN, AGED 64,
S/O. THIRUVATH GOVINDHANKUTTY, PARAKKUNATHU MEETHAL,
CHERUPPA AMSOM, MANNARKKAD DESOM, KOZHIKODE TALUK.

BY ADVS.SRI.G.SREEKUMAR (CHELUR)
SRI.K.M.FIROZ
SMT.PREETHY KARUNAKARAN
SRI.K.RAVI (PARIYARATH)
SRI.K.DILIP

RESPONDENTS:-

1. K.T.KUNHAMMAD,
S/O. KUTTAKIL KOCHAMBALI MOIDEEN
ANDHIYOORKUNNU AMSOM, VALIYAPARAMBA DESOM,
ERNAD TALUK, MALAPPURAM DISTRICT-673572.
2. MAMMAD HAJI,
S/O. KEEDAKADAN MAMMAD MUSALIYAR,
PEEDIKAKANDI HOUSE, ANDHIYOORKUNNU AMSOM,
VALIYAPARAMBA DESOM, ERNAD TALUK,
MALAPPURAM DISTRICT-673572.
3. FATHIMA,
W/O. LATE T.P. MUHAMMED,
THAZHATHEPALLIYALI ANDHIYOORKUNNU AMSOM,
MUTTAYOOR DESOM,ERNAD TALUK,
MALAPPURAM DISTRICT-673 001.
4. ASHRAF
S/O. LATE T.P. MUHAMMED,
THAZHATHEPALLIYALI ANDHIYOORKUNNU AMSOM,
MUTTAYOOR DESOM,ERNAD TALUK
MALAPPURAM DISTRICT-673001.
5. RUKSHSANA
D/O. LATE T.P. MUHAMMED
THAZHATHEPALLIYALI ANDHIYOORKUNNU AMSOM,
MUTTAYOOR DESOM,ERNAD TALUK
MALAPPURAM DISTRICT-673001.

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6. ARIFA,
D/O. LATE T.P. MUHAMMED,
THAZHATHEPALLIYALI ANDHIYOORKUNNU AMSOM
MUTTAYOOR DESOM,ERNAD TALUK,
MALAPPURAM DISTRICT-673001.
7. RAIHANATH,
D/O. LATE T.P. MUHAMMED,
THAZHATHEPALLIYALI ANDHIYOORKUNNU AMSOM,
MUTTAYOOR DESOM,ERNAD TALUK,
MALAPPURAM DISTRICT-673001.
8. AFTHABU,
S/O. LATE T.P. MUHAMMED,
THAZHATHEPALLIYALI ANDHIYOORKUNNU AMSOM,
MUTTAYOOR DESOM, ERNAD TALUK,
MALAPPURAM DISTRICT-673001

THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 31-01-2012,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

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O.P.C.No. 345 of 2012 (O)

APPENDIX

PETITIONER'S EXHIBITS:-

- EXT.P1:- COPY OF THE PLAINT IN O.S.NO.135/06 DATED 29.09.2006.
- EXT.P2:- COPY OF THE WRITTEN STATEMENT OF THE DEFENDANTS 1 AND 2 IN
EXT.P1 SUIT DATED 17/11.2006.
- EXT.P3:- COPY OF THE WRITTEN STATEMENT OF THE THIRD DEFENDANT DATED
20/6/2009 IN EXT.P1 SUIT.
- EXT.P4:- COPY OF THE AGREEMENT DATED 10.12.2003.
- EXT.P5:- COPY OF THE REPORT OF THE EXPERT OPINION FILED IN EXT.P1
SUIT DATED 27.01.2008.
- EXT.P6:- COPY OF THE ORDER PASSED IN I.A.NO.2296 OF 2011 IN EXT.P1
DATED 18.11.2011.
- EXT.P7:- COPY OF THE APPLICATION OF THE PETITIONER AS I.A.NO.1 OF
2012 IN EXT.P1 SUIT DATED 02.01.2012.
- EXT.P8:- COPY OF THE ORDER PASSED IN I.A.NO.1 OF 2012 IN EXT.P1 SUIT
DATED 11.01.2012.

RESPONDENT'S EXHIBITS:- NIL

//TRUE COPY//

PA TO JUDGE

MG

S.S.SATHEESACHANDRAN, J.

O.P(C).No.345 of 2012-o

Dated this the 31st day of January, 2012

JUDGMENT

Plaintiff in a suit for specific performance of a agreement of sale, is the petitioner. After the closing of the evidence, the plaintiff applied for reopening of the evidence, to examine the expert to whom the agreement of sale was sent over for scientific examination. In view of the disputes raised by the defendants that the endorsement made in that agreement seeking further time for completion of the contract was not genuine, but forged the document was sent to the expert. Previously, though the plaintiff had taken steps for examination of the expert, his presence could not be secured and, thereupon, the evidence was closed. The application for reopening of the evidence to summon the expert for his examination to substantiate the opinion given in his report was canvassed by the plaintiff, presumably, to vouchsafe the opinion of the expert that

the signature and thumb impression at the bottom of the endorsement was made by none other than the defendant. The learned Sub Judge, it appears, on the facts and the materials produced in the case, found that there was no need to reopen the evidence, as the report of the expert without any objections from the defendants had already been admitted in evidence. Ext.P8 order passed by the learned Sub Judge would also indicate that no substantial ground was made why the expert has to be examined in the case where the report prepared by him had already been admitted in evidence without any objection from the defendants. The learned counsel for the petitioner would submit that being a suit for specific performance, the burden is on the plaintiff to establish that the endorsement had been duly made by the defendants. Though the challenge raised by the defendant had been found to be meritless and incorrect after scientific examination by the expert, as evidenced by Ext.XI report sent by him, still, to discharge the burden cast upon the plaintiff to

negate the challenge disputing the endorsement he applied for reopening the evidence to have the examination of the expert, according to the counsel. If such steps, are not taken, sometimes, it may give room for a challenge at a later stage over the value of the report, is the further submission of the counsel. I do not find any force in the submission made by the counsel where the defendants have not raised any objection to Ext.Xl report. It is also evident from Ext.P8 order passed by the learned Sub Judge that Ext.Xl report has been received in evidence without any objection. The defendants have not sought for examination of the expert. Learned counsel submits that the defendants have moved an application for examination of the expert for setting aside the report, but was not pursued by taking any steps for examining the expert. Whatever that be, in the facts and circumstances, I do not find any impropriety in the order passed by the learned Sub Judge.

2. Learned counsel submits that the suit stands

posted for examination of the defendant tomorrow. In view of the prosecution of the original petition before this court, counsel pleads for adjournment of the trial of the case issuing a direction to the court below to adjourn the case at least by a week. If any request for adjournment is made before the court below by the plaintiff, taking note of the pendency of the original petition, which has been disposed of by this court only today, the court below shall pass appropriate orders thereof.

Subject to the above direction, original petition is dismissed.

Sd/-
(S.S.SATHEESACHANDRAN)
JUDGE

sk/-

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