

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

TUESDAY, THE 6TH DAY OF JANUARY 2015/16TH POUSHA, 19361

OP(C).No. 15 of 2015 (O)

IA.NO.1984/2014 IN OS 250/2011 & OS 251/2011 OF PRINCIPAL SUB COURT,KOLLAM

PETITIONER(S)/1ST DEFENDANT:-

SAJIN,
S/O.DR.UBAID, KUTTIKKATTU PUTHEN VEEDU,
ZIYARATHU NAGAR - 121,
ARUNOOTIMANGALAM DIVISION NO:29, KOLLAM CORPORATION
MANGAD VILLAGE, MANGAD P.O., KOLLAM - 691 015.

BY ADV. SRI.B.MOHANLAL

RESPONDENT(S)/PLAINTIFF & DEFENDANTS 2 & 3:-

1. NAZARUDEEN,
S/O.ABDUL AZEEZ, KUTTIKKATTU PUTHEN VEEDU
ZIYARATHU NAGAR - 121,
ARUNOOTTIMANGALAM DIVISION NO:29, KOLLAM CORPORATION
MANGAD VILLAGE, MANGAD P.O., KOLLAM - 691 015.

2. ABDUL AZEEZ,
S/O.KUNJUMYTHEEN KUNJU, KUTTIKKATTU PUTHEN VEEDU
ZIYARATHU NAGAR - 121,
ARUNOOTTIMANGALAM DIVISION NO:29, KOLLAM CORPORATION
MANGAD VILLAGE, MANGAD P.O., KOLLAM - 691 015.

3. NABEESA BEEVI,
W/O.ABDUL AZEEZ, KUTTIKKATTU PUTHEN VEEDU
ZIYARATHU NAGAR - 121,
ARUNOOTTIMANGALAM DIVISION NO:29, KOLLAM CORPORATION
MANGAD VILLAGE, MANGAD P.O., KOLLAM - 691 015.

BY ADV.SRI.SUBASH CHANDRABOSE

THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 06-01-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PJ

OP(C).No. 15 of 2015 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1. THE TRUE COPY OF THE PLAINT IN O.S.NO.250/2011 OF THE PRINCIPAL SUB COURT, KOLLAM.
- EXHIBIT P2. THE TRUE COPY OF THE PLAINT IN O.S.NO:251/2011 OF THE PRINCIPAL SUB COURT, KOLLAM.
- EXHIBIT P3. THE TRUE COPY OF THE WRITTEN STATEMENT DATED 14.10.2011 FILED BY THE PETITIONER IN O.S.NO:250/2011 BEFORE THE PRINCIPAL SUB COURT, KOLLAM.
- EXHIBIT P4. THE TRUE COPY OF THE WRITTEN STATEMENT DATED 14.10.2011 FILED BY THE PETITIONER IN O.S.NO:251/2011 BEFORE THE PRINCIPAL SUB COURT, KOLLAM.
- EXHIBIT P5. THE TRUE COPY OF THE I.A.NO:1173/2013 IN O.S.NO:250/2011 DATED 21.03.2013 FILED BY THE PETITIONER BEFORE THE PRINCIPAL SUB COURT, KOLLAM.
- EXHIBIT P6. THE TRUE COPY OF THE I.A.NO:1984/2014 IN O.S.NO:250/2011 AND O.S.NO:251/2011 DATED 17.10.2014 FILED BY THE PETITIONER BEFORE THE PRINCIPAL SUB COURT, KOLLAM.
- EXHIBIT P7. THE TRUE COPY OF THE OBJECTION TO I.A.NO:1984/2014 IN O.S.NO:250/2011 AND O.S.NO:251/2011 DATED 28.10.2014 FILED BY THE 1ST RESPONDENT BEFORE THE PRINCIPAL SUB COURT, KOLLAM.
- EXHIBIT P8. THE TRUE COPY OF THE ORDER IN I.A.NO:1984/2014 IN O.S.NO:250/2011 AND O.S.NO:251/2011 DATED 18.11.2014 OF THE PRINCIPAL SUB COURT, KOLLAM.

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

P.BHAVADASAN, J.

O.P.(C) No. 15 of 2015

Dated this the 06th day of January, 2015

J U D G M E N T

Under challenge is Ext.P8 order whereby the court below has declined to send the disputed documents for expert's opinion to compare with the admitted signatures produced by witness during examination in court.

2. The essential facts of the case are as follows:

The suit was one for money based on a promissory note said to have been executed by the father of the petitioner herein. The father of the petitioner is no more. In the suit, the petitioner filed written statement disputing the signature of his father. During the pendency of the suit, he had also filed a petition as Ext.P5 wherein he wanted the court to summon certain documents kept by the statutory authority which according to him, contained the admitted signatures of his father for comparison with the disputed signature.

3. The case of the petitioner is that, it was during the trial, those documents were produced and it was thereafter only he could seek an opportunity to have the documents sent for expert's opinion. The observations of the court below that the petition to send for expert's opinion has been filed on 17.10.2014 may not be factually correct in the sense that the object for which the documents kept by the statutory authority were sought to be produced, were made clear in Ext.P5 itself so that the intention of the petitioner was also evident from that the documents which he wanted to be produced was for a comparison of the signature.

4. Probably, there is some substance in what the petitioner says. However, the fact remains that the court has noticed that it has ample powers under Section 73 of the Indian Evidence Act to make a comparison of the signatures and arrive at a conclusion.

5. It is well settled that there are three modes to prove the signature or writing of a person. They are (1)

Examining a person who is familiar with the signature or handwriting (2) Expert's opinion and (3) Comparison by the court. It is also well settled that the court is the expert of all experts and the comparison made by the court has more value than any other evidence. However, a note of caution has been struck by the Apex Court that the decision of the court shall not be based solely by resorting to the comparison of signature under Section 73 of the Indian Evidence Act and that there should be other supporting evidence to justify a conclusion that the disputed documents were in fact executed by the author of the document.

6. Merely because, there is no expert's opinion, it does not mean that the petitioner is unable to prove his case. It may be one mode of proof. But the other modes are available to him and the court has reserved its power under Section 73 of the Indian Evidence Act. Further, the burden is on the plaintiff to show that the documents were duly executed by the author concerned.

7. Considering the totality of the circumstances and also the fact that the suit is of the year 2011, there seems to be no irregularity, impropriety or illegality in the order passed by the court below as the interest of the petitioner stands amply safeguarded by the observation made by the court below that Section 73 of the Indian Evidence Act is always open.

This petition is without merits and it is accordingly dismissed. This will not preclude the petitioner from challenging the order in appeal or other proceedings as the case may be.

**P.BHAVADASAN
JUDGE**

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