

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

THURSDAY, THE 20TH DAY OF AUGUST 2015/29TH SRAVANA, 1937

OP(C) .No. 3095 of 2012 (O)

AGAINST THE ORDER IN OS 70/2011 of SUBORDINATE JUDGE'S COURT,
KASARAGOD

PETITIONER/PLAINTIFF:

DR.M.A.SHARIFF AGED 67 YEARS
S/O.LATE HAJI P.MOHAMMED
REGISTERED MEDICAL PRACTITIONER, RESIDING AT H-478, 9TH MAIN
3RD CROSS, HAL II STAGE, INDIRA NAGAR
BANGALORE-8

BY ADV. SRI.P.K.MUHAMMED

RESPONDENT/DEFENDANT

M.SHOUKATH
S/O.LATE HAJI P.MOHAMMED, R/A.SHOUKATH VILLAGE
MAGRAL VILLAGE AND POST, KASARAGOD TALUK-671 121

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 20-08-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

- EXT.P1: COPY OF THE PLAINT IN O.S.NO.70/2011 ON THE FILE OF THE SUB COURT, KASARAGOD DATED 29.06.2011.
- EXT.P2: COPY OF THE AGREEMENT EXECUTED BY DEFENDANT DATED 29.01.2010.
- EXT.P3: COPY OF THE REGISTERED LAWYER'S NOTICE ISSUED TO DEFENDANT DATED 04.08.2010.
- EXT.P4: COPY OF THE REGISTERED LAWYER'S REPLY NOTICE CAUSED BY DEFENDANT DATED 27.08.2010.
- EXT.P5: COPY OF THE REGISTERED LAWYER'S REMINDER NOTICE DATED 15.12.2010.
- EXT.P6: COPY OF THE WRITTEN STATEMENT IN O.S.NO.70/2011 DATED 01.09.2011
- EXT.P7: COPY OF THE ISSUES IN O.S.NO.70/2011 DATED 11.04.2012.
- EXT.P8: COPY OF THE PROOF AFFIDAVIT IN O.S.NO.70/2011 FILED BY PLAINTIFF DATED 03.09.2012.
- EXT.P9: COPY OF THE ORDER PASSED BY SUB COURT, KASARAGOD IN O.S.NO.70/2011 DATED 07.09.2012

RESPONDENT'S EXHIBITS: NIL

//TRUE COPY//

P.A.TO.JUDGE

sm

SUNIL THOMAS, J.

O.P.(C) No. 3095 of 2012

Dated this the 20th day of August, 2015

JUDGMENT

The plaintiff is challenging the order of the subordinate court, Kasaragode, in OS No.70/2011, by which the court below directed the plaintiff to remit the deficit stamp duty with respect to a document which was sought to be admitted in evidence and marked as Ext.A1.

2. The petitioner herein laid a suit before the Sub-Court, seeking recovery of a sum Rs.40,22,000/-, with interest and cost, based on a document dated 29.01.2010. The defendant resisted the suit, disputing the document. The case was posted for trial, and in the course of the examination of the witness, the disputed document was tendered in evidence. An objection was raised regarding the nature of the document. The court below, after consideration of the issue, passed the impugned order by which it was held that the document was in the nature of a bond, though styled as an agreement. Hence, the plaintiff was called upon to remit the deficit stamp duty along with penalty. The registry was directed to calculate the

deficit stamp duty and penalty.

3. This is under challenge in this writ proceedings. Heard the learned counsel for the petitioner. The defendant/respondent remained absent, in spite of service of notice.

4. It appears that, the court below has examined the nature of the document which was claimed to be an agreement. After an elaborate consideration of the factual aspects, the nature and contents of the document, and the settled legal position, concluded that document was in the nature of a bond and not an agreement. On that premise, the court below called upon plaintiff to remit the deficit stamp duty for the purpose of tendering the document and admitting it in evidence.

5. On an evaluation of the factual aspects and the nature of the document, I am not inclined to upset the finding of the court below, which is based on a correct evaluation. Hence I find no illegality, warranting interference of this Court, under Article 227 of Constitution of India.

In the result, the OP fails and the same is dismissed.

The court below shall proceed with the trial, after including it in the monthly list.

sm/

Sd/-
SUNIL THOMAS, JUDGE