

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

WEDNESDAY, THE 8TH DAY OF APRIL 2015/18TH CHAITHRA, 1937

OP(C).No. 29 of 2015 (O)

OP 15/2010 of PRL.MUNSIFF, KASARAGOD

PETITIONER(S):

RATAN KUMAR,
S/O.JANARDHANA NAYAK, PANDY IN ADOOR VILLAGE,
KASARGOD TALUK, KASARAGOD - 671 121.

BY ADVS.SRI.K.I.MAYANKUTTY MATHER
SRI.P.RAHUL

RESPONDENT(S):

1. MALINGA MANIYANI,
S/O.NARAYANA MANIYANI, AVANDOOR, ADOOR VILLAGE,
P.O.PANDY, KASARAGOD TALUK, KASARAGOD -671 121.

2. DAYANANDA,
S/O.THYAMPANNA NAIK, PANDY, ADOOR VILLAGE,
P.O.PANDY, KASARAGOD TALUK, KASARAGOD 672 121.

R1 BY ADV. SRI.I.V.PRAMOD

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 08-04-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP(C).No. 29 of 2015 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P-1: TRUE COPY OF O.P NO.15/2010 FILED BEFORE THE
PRINCIPAL MUNSIF
COURT, KASARAGOD

EXT.P-2: TRUE COPY OF THE COUNTER STATEMENT FILED BY THE
PETITIONER BEFORE
THE PRINCIPAL MUNSIF COURT, KASARAGOD IN O.P 15/2010

EXT.P-3: TRUE COPY OF THE DEPOSITION GIVEN BY PW1 IN O.P
15/2010

EXT.P-4: TRUE COPY OF THE DEPOSITION GIVEN BY PW2 IN O.P
15/2010

EXT.P-5: TRUE COPY OF THE DEPOSITION GIVEN BY PW3 IN O.P
15/2010

EXT.P-6: TRUE COPY OF THE ORDER OF THE PRINCIPAL MUNSIF
COURT, KASARGOD
IN O.P 15/2010

EXT.P-7: TRUE COPY OF THE JUDGEMENT OF THIS HON'BLE COURT
IN OP(CIVIL)
NO.2239/2013

EXT.P-8: TRUE COPY OF IA NO.2390/2014 IN OP NO.15/2010 -
PRINCIPAL MUNSIF
COURT, KASARAGOD.

EXT.P-9: TRUE COPY OF THE COUNTER IN IA NO.2390/2014 IN OP
NO.15/2010 -
PRINCIPAL MUNSIF COURT, KASARGOD

EXT.P-10: TRUE COPY OF THE ORDER OF THE PRINCIPAL MUNSIF
COURT, KASARAGOD
IN IA NO.2390/2014 IN O.P NO.15/2010

RESPONDENT(S)' EXHIBITS

P. BHAVADASAN, J.

O.P.(C). No. 29 of 2015

Dated this the 8th day of April, 2015.

JUDGMENT

While disposing of the earlier challenge as per Ext.P6, this Court in Ext.P7 order observed as follows:

"9. It is well settled that trial of election petition is similar to criminal trial. It does not depend upon preponderance of probabilities. Proof required is of much higher standard and if that standard is to be applied in the case on hand, merely because voters' list contain the names of P.Ws.1 to 3, it does not lead to an inference that it must be the same person especially when the person concerned has either pleaded ignorance about the signature or has denied his signature in one of the ballot papers. Of course, the court can compare signatures and come to the conclusion that they are identical even when it is denied or ignorance is pleaded. But that exercise has to be necessarily adopted. If, on the other hand, signature does not help the court, the court is not precluded from looking into other items of evidence to

come to the conclusion that there has been double voting.”

2. After remand, it is stated that three more witnesses were examined. Again the same prayer for sending the signature for expert opinion was preferred by the petitioner. That petition was dismissed by the court below holding that it is belated and that the comparison of the signature is unnecessary.

3. In this petition, reference is made to the observation in the remand order made by this Court which is extracted above. Learned counsel pointed out that the court below was bound to compare the signature and only if that comparison does not help, then the court can resort to other items of evidence.

4. Learned counsel appearing for the respondents has no objection to the above proposal and according to the learned counsel that is all what this Court had stated in the remand order.

This Original Petition is disposed of directing the court below to undertake the exercise under Section 73 of the Evidence Act and make an attempt to compare the signature. Thereafter, it can take note of other items of evidence available on record. The parties will appear before the court below on 21.5.2015.

sb.

P. BHAVADASAN,
JUDGE