

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

THURSDAY, THE 26TH DAY OF MARCH 2015/5TH CHAITHRA, 1937

OP(C).No. 170 of 2015 (O)

(Challenging the order in I.A.1600/2014 in O.S.95/2013 of Munsiff Magistrate
Court, Pattambi dtd.12.1.15)

PETITIONER/DEFENDANT:

SIVASANKARAN
S/O.PARAPPOOR RAGHAVAN NAIR, PARAPPOOR HOUSE
PALLIKKARA AMSOM, VADAKKUMURI DESOM
PONNANI TALUK, MALAPPURAM DISTRICT.

BY ADV. SRI.JAMSHEED HAFIZ

RESPONDENT/PLAINTIFF:

DEVAKI AMMA
W/O.LATE KESHAVAN NAIR, ALAMKODE AMSOM DESOM,
PONNANI TALUK, MALAPPURAM DISTRICT, PIN-679 585.

BY ADV. SRI.THIYYANNOOR RAMAKRISHNAN
BY ADV. SRI.ARUN KUMAR.P
BY ADV. SMT.AMBIKA RADHAKRISHNAN

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 26-03-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS :

- EXT.P1 - A TRUE COPY OF THE PLAINT IN O.S.95/2013 BEFORE THE MUNSIFF MAGISTRATE COURT PONNANI DATED 06-06-2012.
- EXT.P2 - A TRUE COPY OF THE WRITTEN STATEMENT FILED IN O.S.95/2013 BEFORE THE MUNSIFF MAGISTRATE COURT, PONNANI DATED 5-7-2013.
- EXT.P3 - A TRUE COPY OF THE ADDITIONAL WRITTEN STATEMENT FILED BY THE PETITIONER DATED 28-1-2014.
- EXT.P4 - A TRUE COPY OF THE APPLICATION FILED BY THE PETITIONER HEREIN, I.A.1600/2014 IN OS.95/2013 BEFORE THE MUNSIFF MAGISTRATE COURT, PONNANI DATED 4-12-2014.
- EXT.P5 - A TRUE COPY OF THE COUNTER IN I.A.1600/2014 IN OS.95/2013 BEFORE THE MUNSIFF MAGISTRATE COURT, PONNANI DATED 14-12-2014.
- EXT.P6 - A TRUE COPY OF THE ORDER DATED 12-1-2015 IN IA.1600/2014 IN OS 95/2013 BEFORE THE MUNSIFF MAGISTRATE COURT PONNANI.

RESPONDENT'S' EXHIBITS:

- EXT.R1A- COPY OF COMPLAINT NUMBERED AS C.C.288/14 FILED BY PETITIONER'S SON MANIKANDAN AGAINST the PETITIONER AND HIS WIFE ANITHA BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE COURT, PATTAMBI.

// True Copy //

P.A. To Judge.

smp

P.BHAVADASAN, J.

Original Petition (Civil) No.170 OF 2015

Dated this the 26th day of March, 2015.

J U D G M E N T

Under challenge is Ext.P6 order whereby the court below declined to send the communication alleged to have been written by the wife of the petitioner for expert's opinion.

2. Petitioner is the defendant in the suit and the plaintiff in the suit is none other than his mother-in-law. Petitioner's wife who is the daughter of the respondent herein passed away. The respondent herein instituted O.S.No.95/2013 initially for permanent prohibitory injunction seeking to restrain the petitioner herein from entering into the plaint schedule property claiming that it belongs to her. Later on the suit was amended incorporating a prayer that as per Section 17 of Hindu Succession Act, being a Nair family, on the death of daughter, property devolved on her mother. There is also a prayer that property exclusively belongs to her since it was bought using her funds. Under these circumstances, petitioner herein sought to rely on a

letter said to have been written by his wife to establish his case.

3. Since the handwriting was disputed and the character of the document was also disputed, in order to establish that the handwriting belongs to his wife, petitioner sought for sending the document for expert's opinion. The court below, holding that there are other modes to prove the handwriting, dismissed the petition.

4. True, there are other modes of proving the handwriting. But obtaining expert's opinion is a well recognised method to establish the handwriting of a person though it may not be conclusive. In the case on hand, there is no justification for the court below to have declined the prayer made by the petitioner to have the document sent for expert's opinion. While declining to do so, it may amount to depriving the petitioner of his valuable right of adducing evidence in his favour. As to what is the nature and character of the letter are matters to be decided at the time of trial and also the consequences of the statements therein.

For the above reasons, this original petition is allowed and the impugned order is set aside and the matter is sent back to

the trial court with a direction to send the disputed document to an expert of the choice of the lower court and obtain expert's opinion. The court below may specify a time limit for the report at the time of forwarding the document for expert's opinion.

Sd/-

**P.BHAVADASAN
JUDGE**

smp