

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

MONDAY, THE 28TH DAY OF SEPTEMBER 2015/6TH ASWINA, 1937

RSA.No. 1137 of 2006 ()

**(AGAINST THE JUDGMENT IN AS.NO. 111/2002 OF SUB COURT, KASARAGOD
DATED 22-09-2006)**

**(AGAINST THE JUDGMENT IN OS.NO. 237/2001 OF PRINCIPAL MUNSIF COURT,
KASARAGOD DATED 13-08-2002)**

APPELLANTS/APPELLANTS/DEFENDANTS:

- 1. BADAR JUMA MASJID,
PILANKATTA, REPRESENTED BY ITS SECRETARY,
ABOOBACKER, S/O. IBRAHIM.**
- 2. BADAR JUMA MASJID,
PILANKATTA, REPRESENTED BY ITS PRESIDENT, P.M.MOHAMMED,
S/O. KUNHALI MUKRI, BOTH ARE RESIDING AT PILANKATTA,
BADIADKA VILLAGE, KASARAGOD TALUK, P.O. NEKRAJE.**

BY ADV. SRI.K.G.GOURI SANKAR RAI

RESPONDENT(S)/RESPONDENT/PLAINTIFF:

**Y. MOIDEEN KUNHI, S/O. ABDULLA,
RESIDING AT KOLARI THAIVALAPPU IN NEKRAJE VILLAGE
AND POST, KASARAGOD TALUK.**

**BY SRI.V.V.ASOKAN, SENIOR ADVOCATE
ADV. SMT.S.AMINA**

**THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION
ON 28-09-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

sts

P.B.SURESH KUMAR, J.

R.S.A.No. 1137 of 2006

Dated this the 28th day of September , 2015

JUDGMENT

The defendants in a suit for declaration and consequential damages are the appellants in this Second Appeal.

2. The plaintiff is a member of the first defendant Juma Masjid. The case of the plaintiff is that the Secretary of the first defendant Juma Masjid has called upon him to produce the marriage certificate of his son and since he could not comply with the said direction, his name was removed from the primary membership of the Juma Masjid. According to the plaintiff, his son was abroad at the relevant

time and it is on account of the said reason that he could not comply with the direction issued by the Juma Masjid and as such the decision to remove his name from the primary membership of the first defendant Juma Masjid is illegal. It is also the case of the plaintiff that the said decision of the first defendant is vitiated on account of non compliance of the principles of natural justice. The plaintiff has, therefore, claimed a declaration that the removal of his name from the primary membership of first defendant Juma Masjid is illegal. He also claimed a decree for recovery of a sum of Rs.1,000/- by way of damages. The defendants contested the suit contending that the removal of the name of the plaintiff from the primary membership of the first defendant Juma Masjid is in accordance with the custom prevailing in the community.

3. The trial court found that the decision impugned in the suit is illegal. The trial court also found that the decision impugned in the suit is a decision which

has drastic civil consequences. The trial court further found that the impugned decision was taken without affording the plaintiff a reasonable time to produce the marriage certificate of his son. Consequently, the suit was decreed as prayed for. The defendants though challenged the decision of the trial court in appeal, the appellate court confirmed the decision of the trial court. The defendants have thus come up in this Second Appeal challenging the concurrent decisions of the courts below.

4. Heard the learned counsel for the appellants.

5. Ext.A1 is the notice issued by the first defendant to the plaintiff directing him to produce the marriage certificate of his son. Ext.A2 is the reply sent by the plaintiff to Ext.A1 notice on 18.8.2000. In Ext.A2, the plaintiff has stated his son is abroad and as such he is unable to produce the marriage certificate directed to be produced. Ext.A3 is the letter issued to the plaintiff by which the first defendant Juma Masjid have communicated

to the plaintiff their decision to remove him from the primary membership of the Juma Masjid. Ext.A3 letter has been issued on the same day on which the plaintiff submitted Ext.A2 reply. Ext.A4 is the letter by which the plaintiff requested the first defendant to review and recall Ext.A3 decision. Ext.A5 is the communication by which the defendants rejected the request made by the plaintiff in Ext.A4. The case of the plaintiff is that the first defendant Juma Masjid has no authority to remove him from the primary membership of the Juma Masjid for non production of the marriage certificate of his son. The case of the defendants, on the other hand, is that the removal of the name of the plaintiff from the primary membership of the first defendant Juma Masjid is in accordance with the custom prevailing in the community. In the light of the contention raised by the defendants, it is for the defendants to establish the custom relied on by them. The courts below concurrently found that the custom enabling the defendants

to remove a person from the primary membership from the Juma Masjid for non production of the marriage certificate has not been established by the defendants. It is beyond dispute that the removal of the plaintiff from the primary membership of the Juma Masjid is a decision which has drastic civil consequences. As noticed above, Ext.A3 decision was taken without affording the plaintiff an opportunity to produce the marriage certificate of his son. The courts below also found that Ext.A3 decision, in the circumstances, is vitiated by non compliance of the principles of natural justice. Coming to the quantum of damages, it is seen that the plaintiff has claimed only a sum of Rs.1,000/- by way of token damages. Since it is found that the decision impugned in the suit is illegal, the plaintiff is entitled to recover damages from the defendants. In the said view of the matter, the decisions of the courts below are in order. The Second Appeal is devoid of merit and the same is accordingly dismissed *in limine*. All the

interlocutory applications in this appeal are closed.

P.B.SURESH KUMAR, JUDGE.

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