

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

MONDAY, THE 2ND DAY OF MARCH 2015/11TH PHALGUNA, 1936

OP(C).No. 475 of 2015 (O)

**OP(TRANSFER) NO.48/2014 OF DISTRICT COURT, KOZHIKODE.
OS. NO.70/2012 OF MUNSIF COURT, VATAKARA.**

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PETITIONER/PETITIONER/DEFENDANT:

**PADINJARE THURUTHIL SOMAN,
AGED 55 YEARS, S/O.KRISHNAN,
PUTHUPANAM AMSOM DESOM,
VATAKARA TALUK, KOZHIKODE DISTRICT.**

**BY ADVS.SRI.K.RAKESH ROSHAN,
SMT.THUSHARA.V.**

RESPONDENT/RESPONDENT/PLAINTIFFS:

- 1. KIZHAKKE THURUTHIYIL DAMU, AGED 75 YEARS,
S/O.CHATHAN, PUTHUPANAM DESOM,
VATAKARA TALUK, KOZHIKODE DISTRICT-673 105.**
- 2. KIZHAKKE THURUTHIYIL GANESHAN, AGED 53 YEARS,
S/O.DAMU, PUTHUPANAM DESOM,
VATAKARA TALUK, KOZHIKODE DISTRICT-673 105.**

**THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 02-03-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

rs.

OP(C).No. 475 of 2015 (O)

APPENDIX

PETITIONER'S EXHIBITS:-

- EXT.P1 - TRUE COPY OF THE PLAINT IN SUIT, OS NO.70/2012 OF MUNSIFF COURT, VATAKARA.
- EXT.P2 - TRUE COPY OF THE WRITTEN STATEMENT FILED BY THE PETITIONER HEREIN AS DEFENDANT IN SUIT, O.S.NO.70/2012 OF MUNSIFF COURT, VATAKARA.
- EXT.P3 - TRUE COPY OF THE MEMORANDUM IN OP(T)48/2014 ON THE FILE OF DISTRICT COURT, KOZHIKODE.
- EXT.P4 - TRUE COPY OF THE COUNTER FILED BY RESPONDENTS IN O.P(T)48/2014 ON THE FILE OF DISTRICT COURT, KOZHIKODE.
- EXT.P5 - TRUE COPY OF THE ORDER DATED 27-01-2014 IN O.P(T)48/2014 ON THE FILE OF DISTRICT COURT, KOZHIKODE.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.S. TO JUDGE

rs.

P. BHAVADASAN, J.

O.P.(C). No. 475 of 2015

Dated this the 2nd day of March, 2015.

JUDGMENT

This Original Petition under Article 227 of the Constitution of India is directed against the order dated 27.1.2015 in O.P.(Transfer) No. 48 of 2014 whereby the District Court, Kozhikode refused to allow the prayer for transfer of O.S. No. 70 of 2012 pending before the Munsiff's Court, Vatakara to any other court in Kozhikode District.

2. O.S. 70 of 2012 was a suit for prohibitory injunction, and for fixation of boundary with respect to the plaint schedule property. Petitioner is the defendant in the suit. In the written statement filed by the defendant he in detail narrated about the earlier litigation which went against the plaintiff and the core of contention was that there was no cause of action for the present suit.

3. Issues were raised and the trial commenced. This Court is given to understand that the plaintiff did not adduce any oral evidence and was satisfied with the marking of documents. The defendant adduced evidence. He examined D.Ws. 1 and 2.

4. The complaint of the petitioner is that while the petitioner was present for oral evidence, the learned Munsiff asked him to settle the matter by giving up his claim to which he is not amenable. Soon thereafter, learned counsel is alleged to have shown hostile attitude against the defendant and when D.W.2 was examined, the court put certain questions which were initially recorded as re-examination though it could not have been recorded as re-examination. It is also pointed out that when questions were put to the witnesses, certain remarks were made by the Bench. This, according to the learned counsel for the petitioner, is sufficient to cause apprehension in his mind that he may not get justice from court and therefore he

sought transfer of the case.

5. The learned District Judge after evaluating the materials before him thought that there were no materials to accede to the request of the petitioner and dismissed the petition.

6. Learned counsel appearing for the petitioner raised the very same contentions raised before the learned District Judge. It is contended that in all fairness and in equity also the case ought to have been transferred once the petitioner has expressed his concern about the impartiality of the officer concerned. The act of the court in questioning the witness after cross-examination and recording the court asked questions as re-examination shows the attitude of the court towards the defendant and it would indicate that the court had already made up its mind. It is further fortified, according to the learned counsel, that on a motion made by the court when the defendant refused to give up his rights, the court turned hostile.

7. One must notice that the District Judge, who is more conversant with the courts in its District and the officers under him found no grounds to accede to the request of the petitioner. The court below has noticed that it is true that initially the court questions were recorded as if it is re-examination, but as soon as the mistake was pointed out to him, he corrected the mistake. No party can insist that the court shall not put questions to him or to his witness. It shall be a practice in courts. If the court had entertained doubt about certain matters, court is entitled to put questions to the witnesses. Probably it may not be in the interests of the parties concerned also. But that does not mean that the court cannot put such questions. After all, the attempt of the court is to find out the truth and in that endeavour it is entitled to put questions at any point of time. Merely because of the error of recording the questions as re-examination, it cannot mean that the court is hostile to the petitioner. As rightly noticed by the learned District

Judge, that was only insignificant in view of the fact that it has been corrected immediately. Moreover, the aspects pointed out by the petitioner are not sufficient enough to warrant a conclusion that there is hostility as such made out against the petitioner.

There is no reason to disagree with the finding of the District Court. The result is that this Original Petition is without merits and it is dismissed.

sb.

P. BHAVADASAN,
JUDGE