

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

TUESDAY, THE 24TH DAY OF MARCH 2015/3RD CHAITHRA, 1937

OP(C).No. 763 of 2015 (O)

I.A. NO. 840/2015 AND IA NO. 841/2015 IN OS 482/2008 OF ADDL.MUNSIFF'S COURT,
KANNUR

PETITIONER/PLAINTIFF :

MALATHI K., AGED 48 YEARS
D/O.MADHAVAN, RESIDING AT KUNHIPARAMBU HOUSE
P.O.PAPPINISSERI, NEAR BTR MANDIRAM,
KANNUR DISTRICT.

BY ADV. SRI.P.U.SHAILAJAN

RESPONDENTS/DEFENDANTS :

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1. PURUSHU C. @ PURUSHOTHAMAN, AGED 54 YEARS
S/O.MADHAVI, BOAT PALAM, AZHEEKODE AMSOM
DESOM, P.O.AZHEEKODE, KANNUR-670009.
 2. LAKSHMI, AGED 65 YEARS
D/O.MATHU, KARINCHAN HOUSE, BOAT PALAM
P.O.AZHEEKAL, KANNUR, 670009.

THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 24-03-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Mn

...2/-

OP(C).No. 763 of 2015 (O)

APPENDIX

PETITIONERS' EXHIBITS :

- EXHIBIT-P1: TRUE COPY OF THE PLAINT IN O.S.NO.482/08 BEFORE THE
ADDITIONAL MUNSIFF'S COURT, KANNUR.
- EXHIBIT-P2: TRUE COPY OF THE WRITTEN STATEMENT OF 2ND DEFENDANT IN
O.S.NO.482/08.
- EXHIBIT-P3: TRUE COPY OF THE I.A.NO.841/2015 IN O.S.NO.482/08, THE PETITION
FOR THE CAUSE PRODUCTION OF THE DOCUMENT DATED 27.2.2015.
- EXHIBIT-P4: TRUE COPY OF THE ORDER DATED 5.3.2015 IN I.A.NO.841/2015 IN
O.S.NO.482/08 OF THE ADDITIONAL MUNSIFF'S COURT, KANNUR.
- EXHIBIT-P5: TRUE COPY OF THE ORDER DATED 5.3.2015 IN I.A.NO.840/2015 IN
O.S.NO.482/08 OF THE ADDITIONAL MUNSIFF'S COURT, KANNUR.

RESPONDENT(S)' EXHIBITS : NIL

//TRUE COPY//

P.S. TO JUDGE

Mn

P. BHAVADASAN, J.

O.P.(C). No. 763 of 2015

Dated this the 24th day of March, 2015.

JUDGMENT

Under challenge are Exts.P4 and P5 orders passed by the Munsiff's Court, Kannur dismissing I.A. No. 840 of 2015 and I.A. 841 of 2015. I.A. 840 of 2015 is a petition for removing the case from the list for trial and I.A. 841 of 2015 was a petition filed calling upon the authority concerned to produce the original filing sheets of registered settlement deed No.2181/1988 containing the signature of Lakshmi and the original thumb impression register for the period October, 1988 and other relevant documents pertaining to document No. 2181/1988 based on which suit was laid.

2. The suit was one for partition which was initially decreed and final decree proceedings were initiated. Initially the defendants were set ex parte and later the ex

parte decree was set aside and the defendants contested the suit.

3. As already stated, the suit was based on settlement deed No. 2181/1988. The defendants chose to contest the suit and disputed the signature of the donor in the said document.

4. It is pointed out by the learned counsel that under those circumstances it has become necessary to call for necessary documents from the Registrar's office to prove the thumb impression of the donor and that is the reason for filing a petition, I.A. 841 of 2015. It is pointed out that the petitioner has always been diligent in prosecuting the suit and the court below was not justified in dismissing the petition. It is also pointed out that no particular prejudice will be caused to the respondents in having the documents produced.

5. The suit is of the year 2008. It is true that initially the suit was decreed ex parte and later the defendants contested the suit. The court below has noticed that even in the written statement filed by the defendants, they disputed the genuineness of document No.2181/1988 of S.R.O., Valapattanam based on which the suit was laid. The court below has also noticed that after the pleadings were completed and issues were raised, the case was posted for steps on two occasions, i.e., on 6.11.2014 and 29.11.2014 and no steps were taken by any of the parties and the suit was included in the list on 3.3.2015 by order dated 20.12.2014. Even after the suit was listed on 20.12.2014 to 3.3.2015, there was no attempt from the side of the petitioner to call for the documents made mention of earlier and she waited till the date on which the suit was listed, i.e., on 3.3.2015 to move the above application.

6. There was no justification for the considerable delay in moving the application. The court below formed the opinion that it was a delaying tactics adopted by the petitioner. The court cannot be found fault with for reaching such a conclusion.

7. The petitioner can take such steps as are available to him to summon the officer concerned along with the document at the time of his evidence and seek to establish his case also. Therefore, it is not as if that the petitioner is precluded from adducing evidence. This court finds no error in the order of the court below.

With the above observation, this Original Petition is dismissed.

sb.

P. BHAVADASAN,
JUDGE