

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

TUESDAY, THE 28TH DAY OF JULY 2015/6TH SRAVANA, 1937

OP(C) .No. 1389 of 2015 (O)

AGAINST THE ORDER/JUDGMENT IN IA 547/2015 of MUNSIF COURT, ALATHUR
DATED 23-03-2015

PETITIONER:

BALACHANDRAN, AGED 59 YEARS
S/O.CHATHUKUTTY EZHUTHACHAN,
HAREKRISHNA, KALLAMBAD, MELARCODE POST
ALATHUR TALUK.

BY ADV. SRI.GEORGE POONTHOTTAM

RESPONDENTS:

1. BRAHMANANDASWAMI SIVAYOGI SIDHASRAMAM,
PB NO.1, PUTHIYANGAM AMSOM, ALATHUR TALUK
REPRESENTED BY MADATHIPATHI/PRESIDENT
SWAMI SIVANANDAYOGI - 678541.

2. SWAMI SIVANANDAYOGI,
MADATHIPATHI/PRESIDENT
BRAHMANANDASWAMI SIVAYOGI SIDHASRAMAM, PB NO.1
PUTHIYANGAM AMSOM, ALATHUR TALUK-678541.

R1&2 BY ADV. SRI.P.VIJAYARAGHAVAN

R1&2 BY ADV. SRI.V.A.JOHNSON (VARIKKAPPALLIL)

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 28-07-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S) ' EXHIBITS :

P1: TRUE COPY OF THE ORDER DATED 21/10/2010 PASSED IN I.A NOS.998 OF 2010 AND 1057 OF 2010 IN OS.175/2010 BY THE COURT OF MUNSIFF, ALATHUR.

P2: TRUE COPY IA NO.419/2015 IN OS 175/2010 BEFORE THE COURT OF MUNSIFF, ALATHUR

P3: TRUE COPY OF THE COUNTER AFFIDAVIT DATED 27/2/2015 OF I.A NO.419/2015 IN OS.175/2010 BEFORE THE COURT OF MUNSIFF, ALATHUR

P4: TRUE COPY OF IA NO.547/2015 IN IA 419/2015 IN OS 175/2010 FILED BY THE RESPONDENTS

P5: TRUE COPY OF THE COUNTER AFFIDAVIT FILED BY THE DEFENDANTS

P6: COPY OF THE ORDER DATED 23/3/2015 IN I.A NO.547/2015 PASSED BY THE COURT OF MUNSIFF, ALATHUR.

RESPONDENT(S) ' EXHIBITS:NIL

True Copy

P.A to Judge

SUNIL THOMAS, J.

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O.P(C).No.1389 of 2015

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Dated this the 28th day of July, 2015

JUDGMENT

The petitioner herein challenges the orders of the Munsiff Court, Alathur in I.A.No.547 of 2015 in I.A.No.419 of 2015 in O.S.No.175 of 2010, by which the Court allowed the interlocutory application and ordered summons to be issued to the witnesses mentioned in the witness list.

2. The essential facts as are available from the records are that there was a dispute in relation to the running of a school under the Corporate Educational Agency between one Madam represented by the Madathipathi as the plaintiff, and the defendants. It seems that the B.S.S. Educational Society was the corporate educational agency which was running a school in one of the disputed lands. In O.S.No.175 of 2010 instituted by the Madathipathi along with another person, the Court passed an order dated 21.10.2010 marked as Ext.P1. The court below by the first relief granted in that order restrained the respondents from convening any meeting or conducting any public function in the petition schedule property, other than conducting meetings and

functions related to the academic activities of the educational institutions run in the petition schedule property. The seventh respondent in Ext.P1 order is the petitioner herein.

3. Subsequently, on 07.02.2015 a programme claimed to be the annual day function was conducted in the property, wherein an award was declared and handed over to the District Panchayath President. The meeting was attended by one Ex-Governor, local MLAs and the function was named as 'Mazhavillu'. Thereafter, the plaintiffs filed I.A.No.419 of 2015 alleging that the defendants have committed breach of the above order of the court below and sought for initiating proceedings under Order XXXIX Rule 2A r/w Section 151 of the C.P.C. Ext.P3 counter was filed to the above application. In paragraph 5 of Ext.P3, it was mentioned as follows:

“It is true that the Annual Day function Award Nite was conducted in the school premises on 07.02.2015. For the better appreciation and understanding, the said function was given a name “Mazhavillu”. But it was the Annual Day function wherein the welcome speech was made by the Secretary, BSS Educational Society which is running BSS Gurukulam Higher Secondary School. Reminiscence of the period of 2014-15 was done

by the Principal of BSS Gurukulam Higher Secondary School. In the said function the local MLA Sri.M.Chandran presided and Inaugural Address was given by Sri.K.Sankaranarayanan, Honourable Former Governor of Maharashtra. Key note address in the said function was made by Sri.K.Achuthan MLA, facilitation was done by Sri.T.N.Kandamuthan, the President, District Panchayath, Palakkad and he has awarded the "Swami Nirmalanda Yogi Puraskaram" as decided in the Executive Committee Meeting of BSS Educational Society. Sri.T.N.Kandamuthan was selected to be the recipient of the said Award considering the contributions made by him during the last 10 years for the upliftment of the educational standard of Palakkad District, especially taking into consideration of the poor educational standard of the backward and economically weak sections of the Society. The Executive Committee meeting of BSS Educational Society made mention of these facts in the Minutes whereby the above said decision was taken. The dignitaries, who attended the Annual Day Function are well known and widely respected personalities."

Thereafter, a witness list was submitted by the plaintiffs showing the names of 4 persons, which included the Ex-Governor, two of

the MLAs and the District Panchayath President who admittedly participated in the above programme. The court below by the impugned order Ext.P6 allowed I.A.No.547 of 2015 and ordered summons.

4. This is assailed in this writ proceeding. Heard both sides and examined the records.

5. It is pertinent to note that the specific allegation regarding the function were dealt with in detail in the counter affidavit filed by the respondents. The fact that the meeting was conducted, that it was attended by the persons named therein and the details of the function were either traversed or dealt with in the counter. In the counter to I.A.No.547 of 2015 it was specifically alleged that summoning of the witnesses was with mischievous motives and the intention of the petitioner was to intimidate the dignitaries of all sectors, and preventing them from participating in the functions held by the B.S.S. Gurukulam Higher Secondary School. It was also stated that sufficient reasons were not stated in the affidavit in support of the petition.

6. The above order is assailed on the ground that the issuance of summons to the various dignitaries who participated in

the public function would amount to harassing them. It was also contended that it was contrary to the legal position as explained by the Honourable Supreme Court in **Kokkanda B.Poondacha Vs. K.D.Ganapathi (2011(12) SCC 600)**. The Supreme Court in the above case held that the Court should insist that the applicant party briefly disclose the purpose of summoning the witnesses.

7. A perusal of Ext.P4 witness list indicates that there is a vague reference that the witnesses are summoned to tender evidence. The purpose for which they are sought to be summoned is not disclosed. The order does not disclose that the specific allegation that the above dignitaries were sought to be summoned with mischievous motives was considered by the court below. Evidently, impugned order does not disclose an application of mind with regard to the specific contention that the application to summon the dignitaries was mischievous and was intended to intimidate them. Evidently, a witness is summoned to prove a fact which is in dispute. A fact which is specifically pleaded by one side and not denied by the other side specifically or by necessary implication should be treated as admitted. When the substantial part of the meeting was dealt with by either sides in the affidavit and counter affidavit, the whole question narrowed down as to whether

the witnesses proposed to be summoned were in fact summoned to prove a disputed fact or summoned with an ulterior motive. In the light of the above, Court was bound to consider whether summoning of the witnesses was required. In the absence of any discussion or application of mind in this regard, I feel that the impugned order cannot be legally sustained. The matter is liable to be remanded back to the court below to enable the petitioner before the court below, if he so chooses, to furnish a fresh list of witness showing the purpose for which each witness is proposed to be summoned and the court, after due consideration to pass appropriate order.

In the result, the original petition is allowed and Ext.P6 order is set aside. The court below shall consider the matter afresh and decide whether summons is required to be issued to any or all of the witnesses, in the light of the observations made above.

Sd/-

SUNIL THOMAS
Judge

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