

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

TUESDAY, THE 1ST DAY OF SEPTEMBER 2015/10TH BHADRA, 1937

OP(C).No. 1567 of 2015 (O)

IA.773/2015 IN OS 271/2011 OF MUNSIFF COURT, HARIPAD

PETITIONER(S):

**SANTHAMMA,
AGED 62 YEARS, D/O.PAPPY, SASTHAPARAMPIL
MUTHUKULAM SOUTH MURI, ARATTUPUZHA VILLAGE,
ALAPPUZHA DISTRICT.**

**BY ADVS.SRI.K.SHAJ
SRI.SAJJU.S**

RESPONDENT(S):

**1. KAVIDASAN,
AGED 76 YEARS, S/O.VELUTHAKUNJU, SASTHAPARAMPIL,
MUTHUKULAM SOUTH MURI, ARATTUPUZHA VILLAGE,
ALAPPUZHA DISTRICT.688011.**

**2. S.K.ANIYAN,
AGED 40 YEARS, S/O.KAVIDASAN, SASTHAPARAMPIL,
MUTHUKULAM SOUTH MURI, ARATTUPUZHA VILLAGE,
ALAPPUZHA DISTRICT.688011.**

**BY ADVS. SRI.M.R.ANISON
SMT.K.P.GEETHA MANI**

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 01-09-2015, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:**

PJ

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1: TRUE COPY OF THE PLAINT IN OS NO.271/2011 OF THE MUNSIFFS COURT, HARIPAD.**
- EXHIBIT P2: TRUE COPY OF THE WRITTEN STATEMENT IN OS NO.271/2011 OF THE MUNSIFFS COURT, HARIPAD.**
- EXHIBIT P3: TRUE COPY OF IA NO.773/2015 IN OS NO.271/2011 BEFORE THE MUNSIFFS COURT, HARIPAD.**
- EXHIBIT P4: TRUE COPY OF IA NO.774/2015 IN OS NO.271/2011 BEFORE THE MUNSIFFS COURT, HARIPAD.**
- EXHIBIT P5: TRUE COPY OF THE OBJECTION FILED BY THE 2ND RESPONDENT/DEFENDANT IN IA NO.773/2015 IN OS NO.271/2011 BEFORE THE MUNSIFFS COURT, HARIPAD.**
- EXHIBIT P6: TRUE COPY OF THE OBJECTION FILED BY THE 2ND RESPONDENT/DEFENDANT IN IA NO.774/2015 IN OS NO.271/2011 BEFORE THE MUNSIFFS COURT, HARIPAD.**
- EXHIBIT P7: TRUE COPY OF THE ORDER DATED 10.6.2015 IN IA NO.773/2015 IN OS NO.271/2011 BEFORE THE MUNSIFFS COURT, HARIPAD.**
- EXHIBIT P8: TRUE COPY OF THE ORDER DATED 10.6.2015 IN IA NO.778/2015 IS OS NO.271/2011 BEFORE THE MUNSIFFS COURT HARIPAD.**

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

A.MUHAMED MUSTAQUE, J.

O.P.(C) No.1567 of 2015

Dated this the 1st day of September, 2015

JUDGMENT

The petitioner is the plaintiff in O.S.No.271/2011 on the file of the Munsiff's Court, Harippad, has approached this Court aggrieved by Exts.P7 and P8 orders.

2. Ext.P7 order arising from the application for directing the second defendant to produce certain documents. Ext.P8 is the application filed by the petitioner for sending the disputed 'Will' for forensic science laboratory for expert opinion. The main reason for rejection of Ext.P8 order is that the application was filed when the case was listed for trial.

3. This Court is of the view that the substantial justice demands reconsideration of the matter as merely for the reason that the case was listed for trial, the petitioner' right to adduce evidence has been struck down by the court below. Therefore, I.A.No.773/2015 in O.S.No.271/2011 is allowed and directing the second defendant to produce the document or file an affidavit.

3. Learned Munsiff in Ext.P8 order, observed as follows:

“It is well settled that expert opinion must always be received with great caution and perhaps none so with more caution than the opinion of handwriting expert. The opinion of a handwriting expert being a weak one and not conclusive no reliance can be placed on the report of handwriting expert unless there is some piece of corroborative evidence of either oral or circumstantial nature. Distinct character of handwriting is the result of several factors or several influences. As a person grows in age there will be change in the style of handwriting atleast to a certain extent. So I find merit in the contention put forward by the second respondent/second defendant.”

4. This Court is of the view that the reliability of the expert evidence can be decided after the final evidence. The expert evidence is only a piece of evidence, the court can verify the credibility of the evidence at final hearing.

In that view of the matter, I.A.No.774/2015 in O.S.No.271/2011 is allowed and there shall be a direction to the court below to forward the “Will” in question for expert opinion of an expert chosen by the court below. The court below is directed to take necessary action based on I.A.No.774/2015 in O.S.No.271/2011.

The original petition is disposed of as above.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

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