

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN

WEDNESDAY, THE 16TH DAY OF SEPTEMBER 2015/25TH BHADRA, 1937

OP(C).No. 1446 of 2014 (O)

AGAINST THE ORDER/JUDGMENT IN OS 561/2012 of PRL.SUB
COURT,IRINJALAKUDA DATED 10-06-2014

PETITIONER(S) :

1. PRABHAKARAN, AGED 68 YEARS,
S/O.VELAYUDHAN, KANAKAPRABHA VEETIL,
KAITHARAM P.O, KAITHARAM MURI,
KOTTUVALLY VILLAGE, PARAVUR TALUK
ERNAKULAM DISTRICT.
2. ABDU, AGED 63 YEARS,
S/O.KHADER, KUZHIKKADAVIL HOUSE,
NORTH PARAVUR P.O, PARAVOOTHARA MURI,
PARAVOOR VILLAGE, PARAVUR TALUK,
ERNAKULAM DISTRICT

BY ADVS.SRI.V.RAJENDRAN (PERUMBAVOOR)
SRI.GEORGE VARGHESE KIZHAKKAMBALAM

RESPONDENT(S) :

1. KUNJUMHAMMED, AGED 60 YEARS
S/O.BEERAVUNNY, THEPARAMBIL HOUSE
WEST VEMBALLUR P.O, PIN - 680 006,
VEKKOD DESOM, SREENARAYANAPURAM VILLAGE,
KODUNGALLOOR TALUK.
2. K.R CHANDAN, AGED 54 YEARS
S/O.RAMASWAMY IYYAR, KAREKKATTUPUTHAN MADATHIL
NORTH PARAVUR P.O PIN - 683 513,
PARAVOOTHARA MURI, PARAVOOR VILLAGE,
PARAVUR TALUK, ERNAKULAM DISTRICT.

R1 BY ADV. SRI.DINESH R.SHENOY
R1 BY ADV. SRI.E.VIJIN KARTHIK
R1 BY ADV. SRI.H.KIRAN
R1 BY ADV. SRI.SUJITHKUMAR

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 16-09-
2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP(C) .No. 1446 of 2014 (O)

APPENDIX

PETITIONER(S) ' EXHIBITS

EXHIBIT P1 : COPY OF AGREEMENT DATED 25-06-2012

EXHIBIT P2 : COPY OF PLAINT IN O.S 561/12 DATED 27-07-2012 OF
SUB COURT, IRINJALAKUDA

EXHIBIT P3 : COPY OF WRITTEN STATEMENT FILED BY THE 1ST
RESPONDENT IN O.S 561/12 OF SUB COURT IRINJALAKUDA

EXHIBIT P4 : COPY OF ORDER IN O.S 561/12 OF SUB COURT
IRINJALAKUDA, DATED 10-06-14

RESPONDENT(S) ' EXHIBITS

NIL

//TRUE COPY//

PA TO JUDGE.

jg

THOTTATHIL B.RADHAKRISHNAN, J.

OP(C) No.1446 of 2014

Dated this the 16th day of September, 2015

J U D G M E N T

- 1.This original petition is filed invoking Article 227 of the Constitution of India. Plaintiffs are the petitioners. Heard the learned counsel for the petitioners and the learned counsel for the respondents.
- 2.Plaintiffs sued on the plea that amounts were agreed to be paid for services rendered to negotiate sale of three items of immovable properties. The document relied on by the plaintiffs was placed on record. When that document dated 25.06.2012 was offered to be admitted in evidence, the trial court impounded it holding that it is unstamped and the recitals thereof amount to a 'Bond' as defined under Section 2 (a) of the Kerala Stamp Act, 1959 and hence, it is liable to be charged with duty accordingly. This is under challenge.
- 3.Impeaching the findings of the court below, the learned counsel for the petitioners referred to the contents of the

document in question and argued that it is nothing but recognition of a pre-existing debt and, therefore, the document cannot be treated as anything beyond acknowledgment of an existing debt. Per contra, the learned counsel for the respondents supported the impugned order and argued that the specific recitals in the document in question are such that they create cause of actions by themselves and the document in question is not one merely in the nature of an acknowledgment.

4. I have gone through the document dated 25.06.2012, which is in question. It does not refer to any prior mediated and concluded contract between the parties regarding payment of ₹5,00,000/- for services rendered in connection with the settlement of the transfer of properties. It appears that the plaintiffs' claim is essentially in the form of brokerage. Ext.P1 dated 25.06.2012 does not evidence any independent contract, crystallized rights and duties relating to payment of any such amount, at any point of time prior to Ext.P1 document. The

use of the words “ഞാൻ ഇതിനാൽ സമ്മതിച്ചിരിക്കുന്നു” (I hereby agree) by the first defendant excludes any other conclusion. The document in question is attested by a witness and is one whereby the first defendant is stated to have obliged himself to pay money to the plaintiffs; and not payable to order or bearer. Therefore, the findings of the court below cannot be assailed on any ground whatsoever. This original petition, therefore, fails.

In the result, this original petition is dismissed.

(THOTTATHIL B. RADHAKRISHNAN, JUDGE)