

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

THURSDAY, THE 3RD DAY OF DECEMBER 2015/12TH AGRAHAYANA, 1937

OP(C) .No. 2949 of 2015 (C)

AGAINST THE JUDGMENT IN OS 76/2012 of SUB COURT, THODUPUZHA

PETITIONER(S) / PETITIONERS:

1. SUNNY MATHEW, AGED 48 YEARS
S/O.MATHEW, MOOZHIKKACHALIL HOUSE, KALALIKKADU KARA
MANJALLOOR VILLAGE, MUVATTUPUZHA TALUK.
2. JONCY, AGED 48 YEARS
W/O.SUNNY MATHEW, MOOZHIKKACHALIL HOUSE
KALALIKKADU KARA, MANJALLOOR VILLAGE
MUVATTUPUZHA TALUK.

BY ADV. SRI.N.M.MOHAMMED AYUB

RESPONDENT(S) / RESPONDENTS:

JOHN,, AGED 74 YEARS
S/O.VARKEY, THALACHIRA HOUSE, VANNAPPURAM KARA
VANNAPPURAM VILLAGE, THODUPUZHA TALUK, VANNAPPURAM.P.O
PIN-685607.

THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON
03-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP(C) .No. 2949 of 2015 (C)

APPENDIX

PETITIONER(S) ' EXHIBITS

EXT.P1 TRUE COPY OF THE PLAINT IN O.S.76 OF 2012 SUB
 COURT,THODUPUZHA
EXT.P2 TRUE COPY OF THE WRITTEN STATEMENT IN O.S.76 OF 2012 OF
 SUB COURT,THODUPUZHA
EXT.P3 TRUE COPY OF I.A.401 OF 2015,IN O.S.76 OF 2012 OF SUB
 COURT,THODUPUZHA
EXT.P4 TRUE COPY OF THE COUNTER AFFIDAVIT IN I.A.401 OF 2015,IN
 O.S.76 OF 2012 OF SUB COURT,THODUPUZHA.
EXT.P5 TRUE COPY OF THE ORDER DATED 27-10-2015,IN I.A.401 OF
 2015,IN O.S.76 OF 2012 OF SUB COURT,THODUPUZHA.

RESPONDENT(S) ' EXHIBITS NIL

//TRUE COPY//

P.A TO JUDGE

K. ABRAHAM MATHEW, J.

O.P.(C)No.2949 of 2015

Dated this the 3rd day of December, 2015

J U D G M E N T

Petitioners are defendants in Ext.P1 suit filed by the respondent. The suit is based on a promissory note allegedly executed by the petitioners who are husband and wife. The contention in the written statement is that signature of the husband was obtained on a signed blank paper and the promissory note was written up on it and signature of the wife seen in the promissory note is a forgery. The petitioners filed an application to send the document for comparison to an expert. That has been dismissed on the ground that the affidavit in support of the application was filed by the first petitioner-husband. This is challenged.

2. Heard.

3. The burden to prove that the second respondent has executed the promissory note is on the respondent/plaintiff. The attempt of the petitioners is to disprove what has not been proved by the plaintiff. In that view of the matter the application to send the document

for expert opinion was unnecessary. The learned Sub Judge has observed in the impugned order:-

"It is highly doubtful that why the second defendant has not filed affidavit with respect to the denial of her signature" (sic)

It was unnecessary for the court to make such observation. The observation shall not influence the learned Sub Judge in determining the issues in the suit.

In the result this OP is disposed of with the above observation.

sd/-
K. ABRAHAM MATHEW
JUDGE

R.AV

//True Copy//

PA to Judge