

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

THURSDAY, THE 17TH DAY OF DECEMBER 2015/26TH AGRAHAYANA, 1937

OP(C).No. 3101 of 2015 (O)

**CMP NO. 18/2004 AND ORDER DATED 22/7/2015 IN CMP NO. 7/2015 IN CMP NO. 18/2014
IN AS NO. 29/1996 OF SUB COURT, PALA**

PETITIONER :

**K.T. THOMAS
AGED 68, S/O.THOMAS,
KOOTUMKAL HOUSE,
ARUNOOTTIMANGALAM KARA
THALAPPALAM VILLAGE, MEENACHIL,
KOTTAYAM.**

BY ADV. SRI.M.J.THOMAS

RESPONDENT(S) :

- 1. ALPHONSE THOMAS
S/O.THOMAS, KOOTTUMKAL HOUSE, ULLANADU KARA
BHARANANGANAM VILLAGE, MEENACHIL TALUK- 686589.**
- 2. K.O.OUSEPH
S/O.THOMAS, KOOTTUMKAL HOUSE, THIRUVANKULAM KARA
THIRUVANKULAM VILLAGE, KANAYANNOOR TALUK
ERNAKULAM DISTRICT - 682301.**
- 3. CHARLES
S/O.THOMAS, KOOTTUMKAL, ETTUMANOOR KARA
ETTUMANOOR VILLAGE, KOTTAYAM TALUK - 686101.**
- 4. SEBASTIAN
S/O.THOMAS, KOOTTUMKAL HOUSE, BHARANANGANAM KARA
BHARANANGANAM VILLAGE, MEENACHIL TALUK- 686589.**
- 5. RAJU ABRAHAM
S/O.ABRAHAM, MANIANGATTU HOUSE, KALLOORKULAM P.O.
ANIKADU VILLAGE, KOTTAYAM TALUK- 686101.**

**THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 17-12-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

Mn

...2/-

OP(C).No. 3101 of 2015 (O)

APPENDIX

PETITIONERS' EXHIBITS :

EXHIBIT-P1: TRUE COPY OF THE DECREEE IN OS NO.193/1986 OF THE MUNSIFF COURT, PALA.

EXHIBIT-P2: TRUE COPY OF THE ORDER DATED 3/12/2010 IN IA NO.871/2010 AND IA 872/2010 IN AS NO.29/1996 BEFORE THE SUB COURT, PALA.

EXHIBIT-P3: TRUE COPY OF THE ORDER DATED 3/12/2010 IN IA NO.1576/2011 IN AS NO.29/1996 OF THE SUB COURT, PALA.

EXHIBIT-P4: TRUE COPY OF THE CMP NO.18/2014 IN AS NO.29/1996 OF THE SUB COURT, PALA.

EXHIBIT-P5: TRUE COPY OF THE ORDER DATED 22/7/2015 IN CMP NO.7/2015 IN CMP NO.18/2014 IN AS NO.29/1996 OF THE SUB COURT, PALA.

RESPONDENT(S)' EXHIBITS : NIL

//TRUE COPY//

P.S. TO JUDGE

Mn

K. ABRAHAM MATHEW, J.

O.P.(C)No. 3101 of 2015

Dated this the 17th day of December, 2015

J U D G M E N T

Petitioner is one of the legal heirs of the appellant in As.29 of 1996 of Sub Court, Pala. The court dismissed it as withdrawn. The petitioner filed Ext.P4 application before this court after several years alleging that the signatures in the vakkalath and in the withdrawal application were forged one and her father had never signed them and requesting the court to take appropriate action in the matter. It ordered to send both documents for expert opinion. This is challenged in this OP.

2. Heard the learned counsel for the petitioner.

3. Submission of the learned counsel is that Section 195 Cr.P.C. is not applicable as there is no allegation that the forgery was committed after the documents were produced before the court. I have no doubt that the bar under Section 195 Cr.P.C is not applicable. But the prayer in Ext.P4 application is to take appropriate action in the matter. Once it is brought to the notice of the court that the vakkalath and the withdrawal

application contained forged signatures of the party, it has a duty to conduct an enquiry and if it is proved that the allegations are true it has to necessarily recall the order or the judgment. To this extent Ext.P4 application is maintainable. It is true that the learned Sub Judge has mentioned that the application was filed under Section 340 Cr.P.C. The application does not say so. Whether a complaint under Cr.P.C is maintainable or not is a different question. In the present proceedings the court is bound to conduct an enquiry whether the said documents contain forged signatures. So I am not inclined to entertain this original petition.

In the result, this OP is dismissed with the above observation.

sd/-
K. ABRAHAM MATHEW
JUDGE

R.AV

//True Copy//

PA to Judge