

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

MONDAY, THE 19TH DAY OF JANUARY 2015/29TH POUSHA, 1936

OP(C).No. 2540 of 2014 (O)

AGAINST THE ORDER IN OS 30/2013 of SUB COURT, MANJERI DATED 28-08-2014

PETITIONER(S):

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1. VILOOKARAN RAYINKUTTY'S SON SAIDALAVI,
MANGOTTEERI HOUSE, ANTHIYOORKUNNU AMSOM
MUZHANGALLUR DESOM, PALLIKKAL P.O.
 2. PALLIPARAMBAN MUHAMMED'S SON ANWAR,
KURUKKAN THADATHIL HOUSE, THIRURANGADI TALUK
VELLIMUKKU AMSOM DESOM, VELLIMUKKU POST.

BY ADVS.SRI.A.A.ZIYAD RAHMAN
SRI.LAL K.JOSEPH
SRI.V.S.SHIRAZ BAVA
SRI.JOSEPH KURIAN VALLAMATTAM

RESPONDENT(S):

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1. MUHAMMED ASHARAF
S/O. KAZHUNGUMTHOTTATHIL HASSAN HAJI
ANTHIYOORKUNNU DESOM, MUTTAYUR DESOM, PALLIKKAL P.O.
ERNAD TALUK-675610.
 2. MUJEEB RAHMAN
S/O. KAZHUNGUMTHOTTATHIL HASSAN HAJI
CHERUKAVU AMSOM, CHEVAYUR DESOM, PALLIKKAL P.O.
ERNAD TALUK-675610.
 3. AFSAL,
S/O. KAZHUNGUMTHOTTATHIL HASSAN HAJI
ANTHIYOORKUNNU DESOM, MUTTAYUR DESOM, PALLIKKAL P.O.
ERNAD TALUK-675610.
 4. SHIMJA
D/O. KAZHUNGUMTHOTTATHIL HASSAN HAJI
ANTHIYOORKUNNU DESOM, MUTTAYUR DESOM, PALLIKKAL P.O.
ERNAD TALUK-675610.

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5. JAMEELA,
W/O. KAZHUNGUMTHOTTATHIL HASSAN HAJI
ANTHIYOORKUNNU DESOM, MUTTAYUR DESOM, PALLIKKAL P.O.
ERNAD TALUK-675610.

6. KUNDATTIL SAIFUNNEESA
D/O. AHAMED KOYA, W/O. CHAKKALAKKAL ABUNSAR
PALLIKKAL AMSOM, PALLIKKAL P.O-675610.

7. CHERUKKAT ABDULKAREEM
S/O. CHEKKALI HAJI, EDVANNA AMSOM, PALLIKKAL P.O.
PATHAPIRIYAM DESOM-675610.

8. PULIYENCHERI RAJAGOPALAN
S/O. VELUNAYAR, WANDOOOR AMSOM, PALLIKKAL P.O.
WANDOOOR-675610.

R1-R5 BY ADVS. SRI.K.M.SATHYANATHA MENON
SMT.KAVERY S THAMPI
SRI.T.K.SAIDALIKUTTY

R7-R8 BY ADVS. SRI.M.I.JOHNSON
SRI.T.K.MOIDEEN KUTTY

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 19-01-2015, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:

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APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT-P1- TRUE COPY OF THE PLAINT SUBMITTED BY THE PETITIONER IN O.A 30/2013 OF SUB COURT, MANJERI.
- EXHIBIT-P2- TRUE COPY OF THE WRITTEN STATEMENT FILED BY THE RESPONDENTS 1 TO 5 HEREIN IN O.S 30/2013 OF THE SUB COURT, MANJERI.
- EXHIBIT-P3- TRUE COPY OF THE WRITTEN STATEMENT JOINTLY FILED BY THE RESPONDENTS 7 AND 8.
- EXHIBIT-P4- TRUE COPY OF THE I.A 2060/2013 IN O.S 30/2014.
- EXHIBIT-P5- TRUE COPY OF THE I.A 2492/2013 IN O.S 30/2014.
- EXHIBIT-P6- TRUE COPY OF THE I.A 2493/2013 IN O.S 30/2014.
- EXHIBIT-P7- TRUE COPY OF THE COUNTER AFFIDAVIT IN I.A 2493/2013 IN O.S 30/2014.
- EXHIBIT-P8- TRUE COPY OF THE ORDER DATED 21/06/2014 IN I.A 2060/2013.
- EXHIBIT-P9- TRUE COPY OF THE ORDER DATED 21/06/2014 IN I.A 2492/2013.
- EXHIBIT-P10- TRUE COPY OF THE ORDER DATED 21/06/2014 IN I.A 2493/2014 IN O.S 30/2013.
- EXHIBIT-P11- TRUE COPY OF THE PETITION I.A 777/2014 FILED BY THE PETITIONER FOR REVEIW OF EXHIBIT-P10 ORDER.
- EXHIBIT-P12- TRUE COPY OF THE OBJECTION SUBMITTED BY THE RESPONDENTS 7 AND 8 IN I.A 777/2014.
- EXHIBIT-P13- TRUE COPY OF THE ORDER DATED 28/08/2014 PASSED BY THE HONOURABLE SUB COURT, MANJERI IN I.A 777/2014.

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY ///

P.S. TO JUDGE

PJ

P. BHAVADASAN, J.

O.P.(C). No. 2540 of 2014

Dated this the 19th day of January, 2015.

JUDGMENT

Aggrieved by Exts. P10 and P13 orders passed in I.A. No. 2493 of 2014 and I.A. No. 777 of 2014, the petitioners before the court below have come up with this Original Petition.

2. The suit was one for specific performance in which the petitioners were the plaintiffs. Defendants 1 to 5 in the suit are alleged to have executed an agreement for sale whereby they agreed to sell the property to the plaintiffs. The suit was laid seeking specific performance.

3. Defendants 1 to 5 entered appearance and resisted the suit by pointing out that they had not executed the agreement and it is a concocted one. It is also pointed out that a portion of the property has been sold to defendants 6 to 8 prior to the suit. The plaintiffs therefore had impleaded defendants 6 to 8.

4. Defendants 1 to 5 moved the court by virtue of an interlocutory application for having the agreement sent to an expert since the signatures found on the agreement did not belong to them. The plaintiffs in the suit retaliated by filing an application for sending the documents of defendants 1 to 5 in the suit for expert opinion to show that the agreement for sale had in fact been executed by them.

5. In addition to the said claim, they moved I.A. 2493 of 2013 calling upon defendants 7 and 8 to produce the original sale deeds in their favour said to have been executed by defendants 1 to 5 and to have it sent for comparison of the signatures of defendants 1 to 5. In the light of the counter filed by defendants 7 and 8, that petition was disposed of directing the petitioners before the court below to produce certified copy of the documents. Aggrieved by the said order, the petitioners have filed I.A.

777 of 2014 seeking to have the order reviewed and to direct defendants 7 and 8 to produce the original sale deed in their favour executed by defendants 1 to 5. To the review petition, defendants 7 and 8 pointed out that the documents in their favour had already been deposited before a Bank to avail of a loan and they are unable to produce the same. Accepting the objection raised by defendants 7 and 8, I.A. 777 of 2014 was dismissed calling upon the petitioners before the court below to get original the documents produced from the Sub Registrar's Office if they are so advised. Exts.P10 and P13 orders are under challenge.

6. Learned counsel pointed out that the reason given for dismissing the petition is not sustainable in the light of the order in I.A. 2493 of 2013. Defendants 7 and 8 did not have a case that the documents had been deposited before the Bank and they were unable to produce the same.

The reason for passing Ext.P10 order cannot be sustained.

7. Even assuming that Ext.P10 order may not be sustainable, that does not make much of a difference and in the review petition objection has been taken by defendants 7 and 8 that the documents in their favour had been deposited in a Bank for availing a loan and they were unable to produce the same.

8. Apart from the above fact, one fails to understand the reason for production of sale deed in favour of defendants 7 and 8. The petitioners before the court below in their petition, namely, I.A. 2492 of 2013, made mention of certain documents which contained the admitted signatures of defendants 1 to 5 to sent for expert's opinion. In the light of this, it is quite strange to insist for production of sale deed in favour of defendants 7 and 8. The petitioners have sought for the vakalath, written statement and other documents produced by defendants 1 to 5 in the

suit for seeking expert's opinion to be compared with their signatures in the agreement for sale.

9. It is significant here to note that in fact defendants 7 and 8 have been impleaded since defendants 1 to 6 have disputed their signature in the agreement for sale. Whatever that be, it is quite unnecessary to direct defendants 7 and 8 to produce the documents for comparison.

The result is that Exts. P10 and P13 orders suffer from no legal or factual infirmities and there is no reason to interfere with the impugned orders.

This Original Petition is without merits and it is accordingly dismissed.

sb.

P. BHAVADASAN,
JUDGE