

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

WEDNESDAY, THE 10TH DAY OF JUNE 2015/20TH JYAISHTA, 1937

OP(C).No. 3040 of 2014 (O)

I.A. NO.2649/2014 IN OS. NO.205/2012 OF MUNSIF COURT. PARAPPANANGADI.

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PETITIONER(S):

- 1. CHERIYAKATH IMBICHI BAVA,
S/O.MUHAMMED, CHERIYAKATH HOUSE,
PANDARAKADAPURAM, TIRUR TALUK,
MALAPPURAM DISTRICT.**
- 2. KUTTIKAMMUVINTE PURAKKAL ASSANKUNHI,
S/O.KAMMUTTI BAVA, PANDARAKADAPURAM,
TIRUR TALUK, MALAPPURAM DISTRICT.**

**BY ADVS.SRI.BABU S. NAIR,
SMT.SMITHA BABU.**

RESPONDENT(S):

**KUNHEENTE PURAKKAL SUBAIR,
S/O.CHERIYA BAVA, PANDARAKADAPURAM,
TIRUR TALUK, RAYIRAMANGALAM AMSOM,
TANUR DESOM, MALAPPURAM DISTRICT-676 101.**

R1 BY ADV. SRI.JAMSHEED HAFIZ.

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 10-06-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

rs.

APPENDIX

PETITIONERS' EXHIBITS:

- EXT.P-1: TRUE COPY OF THE PLAINT IN O.S.NO.205/2012 OF THE MUNSIF COURT, PARAPPANANGADI.
- EXT.P-2: TRUE COPY OF THE WRITTEN STATEMENT IN O.S.NO.205/2012 OF THE MUNSIF COURT, PARAPPANANGADI.
- EXT.P-3: TRUE COPY OF THE AGREEMENT DATED 30.11.2006 EXECUTED BETWEEN THE 1ST PETITIONER AND THE RESPONDENT.
- EXT.P-4: TRUE COPY OF THE I.A.NO.2649/2014 FILED BY THE PETITIONER IN O.S. NO.205/2012 OF THE MUNSIF COURT, PARAPPANANGADI.
- EXT.P-5: TRUE COPY OF THE ORDER IN I.A.NO.2649/2014 IN O.S.NO.205/2012 OF THE MUNSIF COURT, PARAPPANANGADI DATED 10.12.2014.
- EXT.P-6: TRUE COPY OF THE AFFIDAVIT DATED 15.12.2014 FILED BY THE PETITIONER IN PLAINT IN O.S.NO.205/2012 OF THE MUNSIF COURT, PARAPPANANGADI.

RESPONDENTS' EXHIBITS: NIL.

//TRUE COPY//

P.A. TO JUDGE

rs.

B. KEMAL PASHA, J.

.....
O.P.(C) No.3040 of 2014
.....

Dated this the 10th day of June, 2015

J U D G M E N T

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A photocopy, which is not attested or even certified as a true copy, was attempted to be pressed into service and marked in the suit before the court below. It seems that the court below has denied such an opportunity to the petitioner. The said refusal by the court below is under challenge.

2. Heard learned counsel for the petitioners and learned counsel for the respondent.

3. According to the learned counsel for the petitioners, the photocopy of a document is admissible in evidence as secondary evidence within the meaning of Section 63(2) of the Indian Evidence Act, 1872 when the original is not available. Section 63(2) says that “Copies

made from the original by mechanical processes which in themselves insure the accuracy of the copy, and copies compared with such copies". The provision is self speaking.

Without a certification of the correctness of the said copy, the same cannot be pressed into service by way of secondary evidence. The provision is clearly explained in paragraph 9 of the decision reported in ***Thampy T.V. Vs. Varkey Emmanuel [2005 (3) KLJ 144]***. In that case, it was held that there was no proof of the accuracy of the photocopy and there was nothing to show that the same was compared with the original and, therefore, it could not be admitted in evidence as secondary evidence within the meaning of Section 63(2) of the Indian Evidence Act. Much discussion is not required to conclude that a mere photocopy without proof of its accuracy or without anything to show that it was compared with the original, is not admissible in evidence as secondary evidence within the meaning of Section 63(2) of the Indian Evidence Act. There

is absolutely nothing to interfere with Ext.P5 order. Ext.P3 cannot be marked in evidence under Section 63(2) of the Indian Evidence Act.

In the result, OP(Civil) is dismissed.

Sd/-
(B.KEMAL PASHA, JUDGE)

aks/10/06

// True Copy //

PA to Judge