

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&
THE HONOURABLE SMT. JUSTICE P.VASHA**

WEDNESDAY, THE 28TH DAY OF JANUARY 2015/8TH MAGHA, 1936

OP(C).No. 3049 of 2014 (O)

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AGAINST THE ORDER DT.11.12.2014 IN I.A.NO.5388/2014 IN O.S.No.585/2012
ON THE FILES OF PRINCIPAL SUB COURT, ERNAKULAM
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PETITIONER:

**SEBAN, AGED 53 YEARS
S/O. SEBASTIAN, PUTHENPURAKKAL HOUSE, VAZHAKKALA
KAKKANAD VILLAGE, ERNAKULAM.**

**BY ADVS.SRI.M.S.UNNIKRISHNAN
SRI.P.FAZIL
SMT.JAYASREE MANOJ
SRI.JITHIN PAUL VARGHESE
SRI.K.SUNIL
SMT.CHITHRA.S.BABU
SMT.P.SHELNA
SMT.M.PPRIYANKA**

RESPONDENT:

**V.S.RAMAKRISHNAN,
S/O. LATE SANKUNNI, VELIYIL HOUSE
NOW RESIDING AT RAMARADHA NILAYAM
EDAPALLY SOUTH VILLAGE, VENNALA P.O., KOCHI - 682 028.**

**R. BY ADV. SRI.K.S.BABU
R. BY ADV. SRI.BABU SHANKAR**

**THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 28-01-2015,
ALONG WITH OPC. 3058/2014, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

OP(C).No. 3049 of 2014 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

**EXHIBIT-P1: TRUE COPY OF THE PETITION IN I.A 5388/2014 ON THE FILES
OF THE PRINCIPAL SUB COURT, ERNAKULAM.**

EXHIBIT-P2: TRUE COPY OF THE OBJECTION FILED BY THE RESPONDENT.

**EXHIBIT-P3: TRUE COPY OF THE ORDER DATD 11/12/2014 IN I.A 5388/2014
ON THE FILES OF THE PRINCIPAL SUB COURT, ERNAKULAM.**

RESPONDENT(S)' EXHIBITS **NIL**

//TRUE COPY//

PA TO JUDGE

T. R. RAMACHANDRAN NAIR & P.V. ASHA, JJ

O.P (C) Nos.3049 & 3058 OF 2014

Dated this the 28th January, 2015.

J U D G M E N T

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**Ramachandran Nair, J.**

These Original Petitions are filed challenging the orders passed by the court below on I.A.No.5388/2014 and I.A.No.5389/2014 in O.S.No.585/2012.

2. The petitioner herein is the defendant in the suit and the respondent is the sole plaintiff. For disposal of the suit within a period, this Court in F.A.O.No.60/2014 has fixed the outer time as 31.3.2015 as prayed by the petitioner. In I.A.No.5388/2014, the prayer is to summon the witness No.3, Superintendent of Official Documents, Collectorate, Ernakulam to produce file No. L10-3100/12 of Collectorate, Ernakulam. The plaintiff opposed the prayer by contending that it is a tactic adopted to delay the trial proceedings.

3. In I.A No.5389/2014, the prayer is to send Ext.A3 along with vakalath and written statement filed by the petitioner

with his specimen signature for examination by an expert as well as to send 20 times enlarged photographs of the specimen and disputed signatures of the defendant along with the report filed.

4. We heard the learned counsel on both sides.

5. As far as O.P.(C)No.3049/2014 is concerned, the learned counsel for the petitioner submitted that the production of the said file is necessary so as to establish his case that there were proceedings against the use of the JCB for filling up the property in question after removal of the soil.

6. The court below has taken the view that the suit was listed for pre-trial steps to 10.10.2014 and thereafter, the case was posted for 15.10.2014 and on that day it was listed to 1.12.2014. It is also recorded in the order that the application is filed without applying before the office for getting copy of it. It is also the view taken that at the final stage the said application is filed.

7. Learned counsel for the petitioner vehemently contended that the production of file is necessary. Learned counsel for the plaintiff explained that it has nothing to do with the contentions raised between the parties, which has gone for

trial.

8. We are not going into the merits of the contentions since if we find anything on the merits that may prejudice the contentions of the parties. For the present, we only record that the reason adopted by the court below cannot be said to be totally beyond the point. The application is dismissed on the premise that the same is not maintainable as the petitioner has not made any effort to get certified copy from the office. Whatever may be the contention on merits, since the application was highly belated, prima facie, we feel that the view taken cannot be said as unjustified. Therefore, we find no reason to interfere with the order. But it is made clear that the observations made by this Court is only for the purpose of deciding this O.P and it will not prejudice the right of the petitioner to challenge the order passed in the I.A. if ultimately the disposal of the suit will be against him and he can take up a ground in the appeal if he propose to file the same.

9. As far as O.P.(C) No.3058/2014 is concerned, the learned counsel for the petitioner vehemently submitted that the comparison of the signature in the document with admitted

signature is necessary. It is submitted that the copy of the document was produced by DW2 from his possession wherein the signature of the petitioner is not there. Therefore, the case of the petitioner is that the signature of the petitioner now shown in the document produced by the plaintiff marked as Ext.A3, is a fabricated one. The view taken by the court below is that the execution of the disputed document, Ext.A3, could be found out from other evidence on record. It is also found that if it is sent for expert opinion now, it will certainly delay the matter. As rightly pointed out by the learned counsel for the respondent, in the light of the time limit already fixed by this Court for disposal of the suit, if the document is sent for expert opinion, it may delay the proceedings. At this stage, the learned counsel for the petitioner submitted that he is limiting his prayer to send the document for getting 20 times enlarged photographs of the specimen and disputed signatures by the expert mentioned in the petition, namely, one Sandeep P.N.

10. The same will have to be considered by the court below itself since the limited prayer now made has not been adjudicated by the order passed in the I.A. Therefore, without

prejudice to the right of the petitioner to agitate the said request before the court below, O.P.(C) No.3058/2014 is disposed of and the matter will be considered by the court below untrammelled by the observations made in the impugned order in I.A. No.5389/2014 and appropriate orders will be passed.

Issue copy today itself.

**sd/-**  
**T.R.RAMACHANDRAN NAIR,**  
**JUDGE.**

**sd/-**  
**P.V.ASHA, JUDGE.**

Ps/28/1/2015

//True copy//

PA to Judge