IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

FRIDAY, THE 19TH DAY OF JULY 2024 / 28TH ASHADHA, 1946

OP(C) NO. 689 OF 2015

PETITIONER:

KUNHILAKSHMI AMMA
AGED 70 YEARS
D/O.PARU AMMA, PARAPARAMBIL @ NEYYUR VELUTHEDATH HOUSE
CHEKKODE DESOM, KUMARANELLOOR AMSOM, PALAKKAD DISTRICT

BY ADV SRI.P.JAYARAM

RESPONDENTS:

1 **SAROJINI AMMA**
PARAPARAMBIL @ NEYYUR VELUTHEDATH HOUSE CHEKKODE DESOM,
KUMARANELLOOR AMSOM, P.O.KUMARANALLUR, PALAKKAD DISTRICT.
PIN-679 552

2 **KAMALAKSHMI AMMA**
D/O.PARU AMMA, PARAPARAMBIL @ NEYYUR VELUTHEDATH HOUSE
CHEKKODE DESOM, KUMARANELLOOR AMSOM, P.O.KUMARANALLUR
PALAKKAD DISTRICT, PIN -679 552

BY ADVS.
SRI.ARUN MATHEW VADAKKAN
SRI.SANTHEEP ANKARATH

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 19.07.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 19th day of July, 2024

This Original Petition, has been filed under Article 227 of the Constitution of India, seeking the following reliefs:

> *i) Call for the records relating to Exhibit P7 order from Sub Court, Ottapalam;*
>
> *ii) Set aside Exhibit P7 order;*
>
> *iii) Grant such other reliefs found just and proper in the facts and circumstances of the case.*

2. Heard the learned counsel for the petitioner and the learned counsel appearing for the respondents. Perused the impugned order and relevant materials available.

3. The petitioner herein is the plaintiff and respondents herein are the defendants in O.S. No.195/2010 on the files of the Sub Court, Ottapalam. The suit has been filed for specific performance of contract. Since the defendants disputed their signatures in the agreement, the same was forwarded to the State Forensic Science

Laboratory. The Scientific Assistant (Documents), Regional Forensic Science Laboratory, Thrissur, as per the report dated 19.12.2014 reported as under:

> *“On comparison, the questioned items were agree with the standards in significant writing characteristics such as the nature of execution of the letters പ and വ, the movement of writing the letter മ and the manner of writing the double letter 'മ്മ', the movement of writing the letter ക, the nature of execution of the letter ക്ഷ, the movement of writing the letter 'ര' and its relative size, the movement of writing the letter 'ജ', the nature of commencement and movement of the initial character presumably 'p' in the signature and the nature of execution of the terminal character presumably 'K' in the signature. The questioned items are also agree with the standards in general character characteristics such as skill, movement, speed etc. However the questioned items are not very extensive and lacks sufficient amount of significant characteristics to arrive at a definite conclusion regarding its authorship. Moreover the standard items written in the normal course during the period of execution of the questioned*

items were not supplied for comparison. In the above circumstances it has not been possible to arrive at any definite conclusion regarding its authorship. However, with the available similarities found between the questioned and the standards, it is concluded that the questioned items stamped and marked Q1 to Q6 are likely to be written by the writer of the standards marked S1 to S60."

4. Thereafter, the plaintiff/petitioner herein again filed a petition to forward the documents to Director of Forensic Science Laboratory, Thiruvananthapuram, for expert opinion. As per the impugned order, the learned Sub Judge dismissed the petition. At this juncture, the petitioner herein filed this petition challenging the impugned order. According to the learned counsel for the petitioner, as per the decision in ***Hydru and another*** *v.* ***Govindankutty Nair*** reported in **[AIR 1982 KERALA 49]**, in paragraph No.14, this Court held as under:

"14. *The above discussion leads to the conclusion that whether it be under O.26 of the Code or under S.45 of the Evidence Act, there is*

no prohibition as such against making a second reference to a handwriting expert without setting aside the report of the first; the Court has a discretion in the matter. To say so is not to handover to the alcoholic the key of the distillery and to permit the trial Courts to issue commissions galore, but only to distinguish a matter of practice from a matter of law. The discretion is there, of course, to be used with circumspection."

5. He also placed the decision in ***Chandrasekharan Nair*** *v.* ***Olympic Credit Corporation*** reported in **[2014 (2) KLT 242]** with reference to paragraph Nos.14 and 15. The same are extracted hereunder:

"14. Experts are persons who have special or peculiar skill which is acquired by study of scientific work and practical observations. An expert is one who has made the subject upon which he speaks a matter of particular study, practice or observation; and he must have special knowledge of the subject (State of H.P. v. Jai Lal & Ors. (2000 (2) KLT SN 15 (C.No.17) SC = (1999) 7 SCC 280). He is a person instructed by experience (Narayana

Kekunnaya v. Vishnu Derinjathaya (1961 KLT 960). His opinion must be based on specialized knowledge. There are certain tests to ascertain the reliability of experts. His educational background, readiness to give the details of his techniques and procedures are two of such tests. The lower court had no materials before it to ascertain the qualifications and competence of V.Sukumara Chettiyar. (The report shows that V.Sukumara Chettiyar is a retired Joint Director and Head of Documents Division of the Kerala State Forensic Science Laboratory). It is also not known whether V.Sukumara Chettiyar had any equipment to scientifically examine documents. Before a document is sent to a person for scientific examination the court should at least prima facie satisfy itself about his academic qualifications and competence and that he has a sufficiently equipped laboratory. This was not done in this case. When an expert is appointed to do some scientific work, it is proper that the court issues a commission warrant as provided in O.26 R.10 of the Code of Civil Procedure Code. The age of handwriting expert also is relevant

because he is required to have a 'photographic eye' to recognise similarities and differences in the questioned and the admitted or proved signatures.

15. An expert opinion has two parts, data part and opinion part. The opinion part is useless without data part. The opinion should be supported by reasons. Presently we shall examine whether the opinion of V.Sukumara Chettiyar is supported by reasons."

6. In fact, going by the afore decisions, it is permissible for a court to get a second opinion also. In the instant case, as per the report submitted by the Forensic Science Laboratory, Thrissur, it has been stated as extracted above and the specific finding of the expert is that, *the questioned items are not very extensive and lacks sufficient amount of significant characteristics to arrive at a definite conclusion regarding its authorship but, with the available similarities found between the questioned and the standards, it is concluded that the questioned items stamped and marked Q1 to Q6 are likely to be written by the writer of*

the standards marked S1 to S60.

7. In the decision reported in ***Dayal Singh v. State of Uttaranchal*** [AIR 2012 SC 3046 : (2012) 8 SCC 263], it has been held by the Supreme Court that Courts look upon expert evidence with greater sense of acceptability, but are not absolutely guided by such evidence, especially if such reports are perfunctory, unsustainable and are the result of a deliberate attempt to misdirect the prosecution. The expert witness is expected to put before the Court all materials inclusive of the date which induced him to come to the conclusion and enlighten the Court on the technical aspect of the case by examining the terms of science, so that the Court, although not an expert, may form its own judgment on those materials after giving due regard to the expert's opinion.

8. Thus, it is a settled principle of law that the expert evidence is only an opinion. It could just corroborate the substantive evidence. An expert's evidence being only an opinion, it is up to the parties to let in evidence challenging

its correctness and it is up to the court to form its own conclusions on the evidence. When direct evidence is forthcoming on the matters spoken to by an expert, the court is not precluded from acting on such direct evidence in preference to the report of an expert.

9. It is well settled further that, the report of an expert is not the conclusive proof. Evidence of expert, after all, is opinion evidence. The court has to evaluate the same, like any other evidence. It is for the court to judge whether the opinion has been correctly reached on the data available and for the reasons stated. The opinion of an expert is not a substantive piece of evidence in the case, and it is not conclusive. It is the duty of the courts to scrutinise the expert opinion tendered in evidence very closely, and to find out the basis upon which it was made. After all, it is only an opinion evidence and cannot be safely relied upon, unless the basis of opinion is found to be firm. Where the court permits the evidence of one expert to be brought on record, on a technical matter, it does not abdicate its function to judge for

itself whether the opinion of an expert is correct or not on a matter in issue.

10. On evaluation of the legal position as to the sanctity of an expert opinion, being a corroborative piece of evidence, the expert opinion has no independent existence without support of substantive evidence. Hence, it is to be held that once a report was filed by an authorized Government Forensic Science Laboratory of State of Kerala situated at Thrissur, there is no necessity to call for another report by forwarding the documents to the Forensic Science Laboratory at Thiruvananthapuram and sometimes, the officer now in Thiruvananthapuram may be the officer who conducted the test at Thrissur also.

11. Holding so, the prayer to send the documents for examination by the State Forensic Science Laboratory, Thiruvanathapuram found to be unwarranted as found by the trial court and the petitioner is at liberty to raise his contentions before the trial court, if necessary, by examining the expert. Needless to say that, it is the duty of the plaintiff

to prove the suit document by substantive evidence to get the reliefs.

In such view of the matter, there is no necessity to interfere with the order impugned. As such, this petition is liable to fail and accordingly the same stands dismissed.

Sd/-

A. BADHARUDEEN
JUDGE

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APPENDIX OF OP(C) 689/2015

PETITIONER EXHIBITS :

EXT.P1 -	**TRUE COPY OF THE PLAINT IN O.S.NO.195/2010 ON THE FILES OF SUB COURT OTTAPALAM.**
EXT.P2 -	**TRUE COPY OF THE WRITTEN STATEMENT IN O.S.NO.195/2010 ON THE FILES OF SUB COURT OTTAPALAM.**
EXT.P3 -	**TRUE COPY OF THE EXPERT REPORT DATED 19-12-2014 ISSUED FROM REGIONAL FORENSIC SCIENCE LABORATORY, THRISSUR.**
EXT.P4 -	**TRUE COPY OF THE OBJECTIONS DATED 11-02-2015 IN EXHIBIT P3 REPORT.**
EXT.P5 -	**TRUE COPY OF THE AFFIDAVIT IN IA NO.514/2015, OS NO.195/2010 ON THE FILES OF SUB COURT, OTTAPALAM.**
EXT.P6 -	**TRUE COPY OF THE COUNTER STATEMENT IN IA NO.514/2015, OS NO.195/2010 ON THE FILES OF SUB COURT, OTTAPALAM.**
EXT.P7 -	**TRUE COPY OF THE ORDER DATED 03-03-2015 IN IA NO.514/2015,OS NO.195/2010 ON THE FILES OF SUB COURT, OTTAPALAM.**