IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

FRIDAY, THE 7TH DAY OF JUNE 2024 / 17TH JYAISHTA, 1946

OP(C) NO. 615 OF 2024

AGAINST THE ORDER DATED 14.02.2024 IN I.A. NO.11/2024 IN OS NO.11 OF 2021 OF ASSISTANT SESSIONS COURT/SUB COURT / COMMERCIAL COURT, MAVELIKKARA

PETITIONERS/COUNTER PETITIONERS/ADDL. DEFENDANTS:

1 THANKAMMA
AGED 72 YEARS
W/O. LATE EEAPEN, MULAKKAL PUTHENVEED, PULLAMPADA MURI, PALLIPAD VILLAGE, ALAPUZHA, PIN - 690512

2 SHOBA
AGED 52 YEARS
D/O.LATE EEAPEN, ALUMOOTTIL, PALLICKAL KIZHAKKATHIL, KURATHIKAD, MAVELIKARA, ALAPUZHA, PIN - 690107

3 BIJOY EAPEN
AGED 45 YEARS
S/O. LATE EEAPEN, MULAKKAL PUTHENVEED, PULLAMPADA MURI, PALLIPAD VILLAGE, ALAPUZHA, PIN - 690512

4 SANTHOSH EAPEN
AGED 49 YEARS
S/O. LATE EEAPEN, MULAKKAL PUTHENVEED, PULLAMPADA MURI, PALLIPAD VILLAGE, ALAPUZHA, PIN - 690512

BY ADVS.
P.R.HARIKUMAR
ANANTHU S. HARI
AMEENA M.S

RESPONDENT/PETITIONER/PLAINTIFF:

SUNIL R.
AGED 45 YEARS
S/O. RAMACHANDRAN NAIR,
R.S.NILAYAM,VELLAMKULANGARA MURI, VEEYAPURAM VILLAGE, HARIPAD, ALAPUZHA, PIN - 690514

BY ADVS.
S.K. SAJI
MAYAMOL T.S.(K/1727/2001)
G.R.MANJU(K/2072/1999)

THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 07.06.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Dated this the 7th day of June, 2024

JUDGMENT

Ext. P15 order passed by the Sub Court, Mavelikkara is under challenge in this Original Petition.

2. The petitioners are the additional defendants 2 to 5 and the respondent is the plaintiff in O. S. No.11/2021 on the files of the Sub Court, Mavelikkara (for short 'the trial court'). The suit was originally filed by the plaintiff against the deceased defendant for specific performance of contract. Immediately after the institution of the suit, the original defendant died and his legal heirs were impleaded as additional defendants 2 to 5. They have filed two written statements, which have been marked as Exts.P2 and P10. In their written statements, they denied the execution of the sale agreement. They have also disputed the signature of the original defendant in the sale agreement. At the fag end of the trial, additional defendants 2 to 5 filed I. A. No.11/2024 to send the sale agreement as well as the

acknowledgment card of the notice issued by the plaintiff to the first defendant to an expert for comparing the signatures therein. The trial court as per Ext.P15 order dismissed the application. It is challenging the said order, this Original Petition has been filed.

3. I have heard Sri. Harikumar P.R., the learned counsel for the petitioners as well as Sri. S. K. Saji, the learned counsel for the respondent.

4. The trial court dismissed I. A. No.11/2024 mainly on three grounds:

i. In the written statements, the additional defendants 2 to 5 did not specifically deny the signature of the original defendant in the sale agreement.
ii. The acknowledgment card is not an admitted document.
iii. The application has been filed belatedly at the fag end of the trial.

5. I have gone through Exts.P2 and P10 written statements and additional statement. In paragraph 4 of Ext.P2 written statement, the petitioners have contended that the sale agreement is a fabricated one and the signature shown in the said document is not that of deceased Eapen, who is the first defendant. In paragraph 3 of Ext.P10, the petitioners pleaded that Ext.A1 is a fabricated document and the signature therein is not that of the first defendant. Thus, there is a specific denial of the signature of the original defendant in the sale agreement. In the plaint, the plaintiff has pleaded that on 10.02.2021 he issued a registered lawyer notice to the original defendant, who accepted the same. The plaintiff has produced Ext.P13, reply given by the postal department to the plaintiff in answer to the query made under the Right to Information Act. In Ext.P13, the postal department had stated that the registered lawyer notice issued by the plaintiff to the original first defendant was received by him. Attested copy of the register showing the signature of the original defendant has

been appended along with Ext.P13. It contains the signature of the original defendant. Thus, the plaintiff admits that the signature of the original defendant found in Ext.P13 is that of him. However in Ext.P2 written statement, the additional defendants 2 to 5 had stated that they have no knowledge about the lawyer notice mentioned in the plaint. They have also stated that no such notice was issued by the plaintiff. In the written statement, the defendants did not dispute the signature of the original defendant in Ext.P13. Thus, the signature of the first defendant found in Ext.P13 can be construed as the admitted signature. Since the suit is based on an agreement and the signature of the original defendant, who is one of the executors of the agreement, is under challenge, the delay in filing the application to send the disputed signature to an expert is not fatal. For these reasons, I hold that I. A. No.11/2024 is liable to be allowed. However, Ext.P13 is only an attested copy. The trial court shall summon the original of the register of Ext.P13 which contains the signature of the first defendant from the postal

department and the same shall be sent along with the sale agreement to the expert. Ext.P15 stands set aside by allowing Ext.P14 with the above observations.

This Original Petition is disposed of as above.

Sd/-

DR. KAUSER EDAPPAGATH

JUDGE

BR

APPENDIX OF OP(C) 615/2024

PETITIONERS' EXHIBITS

Exhibit -P1	**TRUE COPY OF THE PLAINT DATED 26-02-2021 IN OS NO.11/2021, BEFORE THE SUB COURT, MAVELIKARA**
Exhibit -P2	**TRUE COPY OF THE WRITTEN STATEMENT DATED 16-06-2022 FILED BY THE FIRST ADDL. DEFENDANT ON BEHALF OF THE OTHER DEFENDANTS ALSO IN OS NO.11/2021, BEFORE THE SUB COURT, MAVELIKARA**
Exhibit -P3	**TRUE COPY OF THE PROOF AFFIDAVIT DATED 18-10-2023 FILED BY THE PLAINTIFF IN OS NO.11/2021,BEFORE THE SUB COURT, MAVELIKARA**
Exhibit - P3(a)	**TRUE COPY OF THE DEPOSITION DATED DATED 18-10-2023 IN CROSS EXAMINATION OF THE PLAINTIFF (PW-1) IN OS NO.11/2021,BEFORE THE SUB COURT, MAVELIKARA**
Exhibit - P4	**TRUE COPY OF THE DEPOSITION OF PW 2 ,DATED 04-11-2023 IN OS NO.11/2021 BEFORE THE SUB COURT, MAVELIKARA**
Exhibit - P5	**TRUE COPY OF THE DEPOSITION OF PW 3,DATED 04-11-2023 IN OS NO.11/2021 BEFORE THE SUB COURT, MAVELIKARA**
Exhibit - P6	**TRUE COPY OF THE DEPOSITION OF PW 4,DATED 17-11-2023 IN OS NO.11/2021 BEFORE THE SUB COURT, MAVELIKARA**
Exhibit - P7	**TRUE COPY OF THE DEPOSITION OF PW 5,DATED 18-11-2023 IN OS NO.11/2021 BEFORE THE SUB COURT, MAVELIKARA**
Exhibit - P8	**TRUE COPY OF THE DEPOSITION OF PW 6 ,DATED 17-11-2023 IN OS NO.11/2021 BEFORE THE SUB COURT, MAVELIKARA**
Exhibit - P9	**TRUE COPY OF THE AMENDED PLAINT DATED 16-12-2023 IN OS NO.11/2021,BEFORE THE SUB COURT, MAVELIKARA**
Exhibit - P10	**TRUE COPY OF THE ADL WRITTEN STATEMENT DATED 05-01-2024 FILED BY THE PETITIONER ON BEHALF OF THE OTHER DEFENDANTS ALSO IN OS NO.11/2021,BEFORE THE SUB COURT, MAVELIKARA**

Exhibit - P11	**TRUE COPY OF THE PROOF AFFIDAVIT DATED 05-01-2024 FILED BY THE ADDL. DEFENDANT ON BEHALF OF THE OTHER DEFENDANTS ALSO IN OS NO.11/2021, BEFORE THE SUB COURT, MAVELIKARA**
Exhibit - P11(a)	**TRUE COPY OF THE DEPOSITION DATED 10-01-2024 IN CROSS EXAMINATION OF THE DEFENDANT (DW 1) IN OS NO.11/2021 BEFORE THE SUB COURT, MAVELIKARA**
Exhibit - P12	**TRUE COPY OF THE AGREEMENT DATED 17-11-2020 BETWEEN THE PLAINTIFF AND EAPEN (DIED) SUBMITTED BY THE PLAINTIFF AS EXHIBIT A1 IN OS NO.11/2021,BEFORE THE SUB COURT, MAVELIKARA (SHOWING THE SIGNATURES OF EAPEN(DIED))**
Exhibit - P13	**TRUE COPY OF THE POSTAL DEPARTMENT RECORD DATED 28-12-2023 SHOWING THE SIGNATURE EAPEN (DIED) SUBMITTED BY THE PLAINTIFF AS EXHIBIT A9 IN OS NO.11/2021, BEFORE THE SUB COURT, MAVELIKARA (SHOWING THE SIGNATURE OF EAPEN (DIED))**
Exhibit - P14	**TRUE COPY OF THE AFFIDAVIT AND APPLICATION DATED 16-01-2024 FILED BY THE PETITIONER ON BEHALF OF THE OTHER PETITIONERS ALSO AS IA NO.11/2024 IN OS NO.11/2021, BEFORE THE SUB COURT, MAVELIKARA TO FORWARD THE SIGNATURES IN EXT P12 AGREEMENT AND SIGNATURE IN EXT P13 DOCUMENT FROM THE POSTAL DEPARTMENT FOR EXPERT VERIFICATION AND COMPARE IT AT STATE FORENSIC SCIENCE LABORATORY, THIRUVANATHAPURAM.**
Exhibit - P15	**TRUE COPY OF THE ORDER DATED 14-02-2024 IN IA NO.11/2024 BEFORE THE SUB COURT. MAVELIKARA IN O.S. NO.11/2021**
Exhibit - P16	**TRUE COPY OF THE AFFIDAVIT AND APPLICATION DATED 22-02-2024 FILED BY THE PETITIONER ON BEHALF OF THE OTHER PETITIONERS ALSO AS IA NO.12/2024 IN O.S. NO.11/2021, BEFORE THE SUB COURT, MAVELIKARA, TO RE-OPEN THE EVIDENCE AND EXAMINE ADDL. WITNESSES**

RESPONDENT'S EXHIBITS

Exhibit R2	**TRUE COPY OF THE AFFIDAVIT AND AN APPLICATION FOR AD-INTERIM INJUNCTION IN O.S. 05/2022 BEFORE THE VACATION COURT, ALAPPUZHA DATED 30.12.2021**
Exhibit R1	**TRUE COPY OF THE PLAINT IN O.S. NO. 05/2022 BEFORE THE VACATION COURT, ALAPPUZHA DATED 30.12.2021**