

(2022) 06 KL CK 0352

High Court Of Kerala

Case No: Original Petition (C) No. 966 Of 2022

A.M. Hakkim

APPELLANT

Vs

Lancy Fernandez

RESPONDENT

Date of Decision: June 30, 2022

Acts Referred:

- Constitution of India, 1950 - Article 227
- Evidence Act, 1872 - Section 45, 73

Hon'ble Judges: A. Badharudeen, J

Bench: Single Bench

Advocate: R.Nikhil, P.M.Shahida

Final Decision: Allowed

Judgement

A. Badharudeen, J

1. The plaintiff in O.S.No.73 of 2020 of Additional Sub Court, Kollam, who is aggrieved by dismissal of I.A.No.6/2022 in the above case as per

Ext.P8 order dated 30.05.2022, has preferred this Original Petition under Article 227 of the Constitution of India.

2. Heard the learned counsel for the petitioner as well as the learned counsel appearing for the respondents.

3. The petitioner herein filed petition under Section 45 of the Indian Evidence Act for forwarding agreement of sale dated 12.06.2020 alleged to be

executed between the plaintiff and the 1st defendant for getting the signatures therein compared with the admitted signatures of the 1st defendant.

According to the petitioner, the plaint schedule property was agreed to be sold to the plaintiff by the 1st defendant as per the disputed sale agreement.

The contention raised by the original petitioner before the trial court is that since the 1st defendant emphatically denied the signatures in the

agreement, expert opinion is necessary to prove that the 1st defendant had signed the agreement after receiving Rs.35,00,000/- as advance after

agreeing to sell the property for a total consideration of Rs.60 lakh.

4. The 1st defendant resisted the petition reiterating the contention that the agreement produced by the plaintiff is fabricated and forged and the

signatures therein were not put by the 1st defendant.

5. However, the trial court dismissed the application for 2 reasons. The trial court pointed out the direction issued by this Court in

O.P(C).No.1959/2021 filed by the 1st Ñ, defendant to dispose of the Suit within a time frame of 3 months as per judgment dated 16.03.2022. It is

pointed out further that when the Original Petition [O.P(C).No.1959/2021] for early disposal was considered by this Court, the plaintiff conceded the

same without raising objection, so as to forward the agreement for getting expert opinion. It was observed by the trial court further that the plaintiff

could very well discharge his burden in the matter of proving the case by adducing oral and documentary evidence.

6. It is argued by the learned counsel for the original petitioner that though the original agreement was signed by 2 witnesses, the 1st witness is none

other than the brother of the plaintiff and the 1st defendant raised allegation that the other witness is a close relative of the plaintiff. Therefore, it is

necessary to get expert opinion to prove the execution of the agreement and prove the signatures in the agreement as that of the 1st defendant.

7. Refuting his contention, the 1st defendant filed counter affidavit reiterating that the agreement for sale is a forged one. Further it is pointed out that

as per Section 73 of the Evidence Act, the court is competent to compare the disputed signatures with admitted signatures and therefore, expert

opinion is not necessary.

8. Reply affidavit is also filed denying the contentions in the counter affidavit.

9. To be on the crux of this matter, no doubt, this is a Suit of the year 2020. The 1st defendant filed O.P(C).No.1951 of 2021 and this Court directed

early disposal of the Suit. However, the same itself will not stand in the way of getting expert opinion. In this matter, the 1st defendant emphatically

denied execution of the sale agreement and alleged the same as a forged one. It is true that the best evidence/substantive evidence to prove the

execution of the agreement is by examining the parties, who alleged to have executed the sale agreement and the witnesses thereof. However, getting

expert opinion in cases, where dispute regarding genuineness of the signatures in the agreement, would corroborate the substantive evidence. In this

case, as I have already pointed out, the Suit is of the year 2020 and, therefore, the petition filed in the year 2022 cannot be held as much belated.

Therefore, I am of the view that the expert opinion sought for in I.A.No.6/2022 is liable to be obtained to prove the case of the plaintiff. Therefore,

Ext.P8 stands set aside and consequently I.A.No.6/2022 stands allowed.

10. It is ordered that the learned Sub Judge shall forward the original agreement with sufficient number of specimen signatures, admittedly put by the

1st defendant during 2020 and by collecting sufficient number of signatures of the 1st defendant, after selecting an expert, most preferably a private

expert, so as to get the report at the earliest.

11. In this regard, the parties are directed to co-operate with the trial court to suggest the expert's panel and to deposit the fee for examination, within

a period of 2 weeks from today. Thereafter, the court below shall select a competent expert from the panel submitted by the parties or at the

discretion of the court and direct the petitioner to deposit the amount required for appointing an expert.

12. The 1st respondent/1st defendant in the Suit shall also co-operate with the procedure for getting expert report, by giving specimen signatures for

comparison.

13. It is made clear that if the petitioner fails to co-operate with the court for forwarding the agreement for expert opinion and the petitioner fails to

deposit batta for getting expert opinion as directed, the trial court can very well ignore this judgment and record that for want of sufficient materials,

forwarding of the agreement is not possible and therefore, the Suit can be proceeded further.

14. In case the agreement is forwarded for getting expert opinion, the period to dispose of the case shall be within three months from the date of

receipt of the expert opinion and the time bound direction issued in O.P(C).No.1951/2021 shall stand modified accordingly. If the agreement could not

be sent for getting expert opinion for non-compliance of the directions issued herein above, the court below shall complete the trial on or before

15.10.2022.

Since it is argued by the learned counsel for the respondents that timely direction may be given to the court below to expedite the process of getting

expert opinion, I direct the court below to oversee the steps for getting expert opinion at the earliest.