
(2022) 03 KL CK 0116

In the High Court Of Kerala

Case No : Original Petition (C) No. 517 Of 2022

Bismi Azhar

APPELLANT

Vs

Sajith T S

RESPONDENT

Date of Decision : 15-03-2022

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2022) 03 KL CK 0116

Hon'ble Judges : A. Badharudeen, J

Bench : Single Bench

Advocate : M.R.Jayaprasad, Roopkumar G

Final Decision : Dismissed

Judgement

A. Badharudeen, J

1. In this original petition filed under Article 227 of the Constitution of India, the petitioner herein impugns order dated 19.02.2022 in I.A.No.3999 of 2022 in O.S.No.704 of 2012.

2. Heard the learned counsel for the petitioner on admission.

3. The petitioner herein filed I.A.No.3999 of 2022 in the above suit with the following prayer;

“For the reasons stated in the accompanying affidavit, it is most humbly prayed that this Hon'ble Court may be pleased to send the alleged agreement dated 09.11.2010 as well as 03.04.2012 produced by the Plaintiff for comparison with the admitted signatures of the Defendant and for forensic examination to compare the signatures in all aspects of the handwriting identification and detection of forgery with modern scientific aids in the State Forensic Science Laboratory, Thiruvananthapuram.”

4. The other side opposed the said contention.

5. In the affidavit in support of the petition, in paragraph No.3, it has been stated that no sale agreement for sale was executed between the petitioner and the plaintiff on 09.11.2010 or 03.04.2012 or any other date. This is the base upon which, comparison of admitted signatures with that of the signatures in the agreement were sought to be examined by a handwriting expert. But, in the written statement filed by the defendant in paragraph No.9, it has been contended that when Mohammed Azhar, the husband of the defendant borrowed an amount of Rs.27,00,000/-(Rupees Twenty Seven lakhs only) from the plaintiff, the plaintiff had obtained

"several signed blank cheques of the defendant and her husband and blank signed stamp papers, signed plain papers of the defendant and her husband and also obtained the copies of the property documents belonging to both of them as the security of the above said money transaction. The plaintiff also assured that at the time of returning the money with interest he will surely return the blank signed cheques, signed stamp papers and blank papers, and copies of other documents etc obtained from the defendant and her husband."

6. Paragraph No.16 of the written statement reads as under;

"16. The stamp papers and other signed papers he obtained tactically from the defendant, the plaintiff fabricated some documents and filed this false and frivolous case before this defendant with a malafide intention to harass the defendant. Absolutely there is no agreement for sale or any other agreement between the plaintiff and defendant."

7. Going by the averments in the written statement, the defendant never raised a contention in the written statement that the signatures in the agreement were forged, though it was contended that the agreements were forged by misusing the blank stamped papers and signed papers issued in relation to the transaction between the petitioner's husband and the plaintiff. Thus, it appears that the prayer in the petition is against the pleadings. For these reasons and other justified reasons, the court below dismissed the application that too filed after ten years from the date of filing of the suit, when it was posted for trial. Going by the order, I do not find any illegality, perversity or arbitrariness to interfere in the impugned order, in a petition filed under Article 227 of the Constitution of India. Therefore, this original petition lacks merit and the same deserves dismissal.

Accordingly, this original petition is dismissed.