

Kerala High Court

Aravindakshan Pillai vs Gopala Pillai Aniyam Pillai on 31 May, 2010

IN THE HIGH COURT OF KERALA AT ERNAKULAM

WP(C).No. 8641 of 2010(0)

1. ARAVINDAKSHAN PILLAI,
... Petitioner

Vs

1. GOPALA PILLAI ANIYAM PILLAI
... Respondent

For Petitioner :SRI.C.RAJENDRAN

For Respondent :SRI.E.NARAYANAN

The Hon'ble MR. Justice THOMAS P.JOSEPH

Dated :31/05/2010

O R D E R

THOMAS P. JOSEPH, J.

W.P.(C) No.8641 of 2010

Dated this the 31st day of May, 2010.

JUDGMENT

Respondent/plaintiff though served on this Writ Petition, remains absent.

2. This Writ Petition is in challenge of Exts.P4 and P5, orders dated 02.03.2010 and 09.03.2010 on I.A.Nos.833 of 2010 and 898 of 2010 in O.S.No. 315 of 2004 of the court of learned Sub Judge, Kollam. That is a suit filed by respondent for recovery of money based on an agreement allegedly executed by the petitioner. But, petitioner would say that he had no transaction with respondent and instead, while borrowing Rs.30,000/- from one Vijayakrishna Pillai, his maternal uncle he had given a signed blank stamp paper containing only the last sentence now seen in the disputed document (as if the document is executed by the petitioner in his own hand). Petitioner wanted that document to be examined by an expert and accordingly that document was sent to the expert for

examination and Ext.P3, report was obtained. When the case was included in the list for trial petitioner wanted the expert to be examined to prove his case. Learned counsel states that case was posted for trial in the list on 04.03.2010 but I.A.No.833 of 2010 (to examine expert) was filed on 24.02.2010. That application was not called in open court but rejected on 02.03.2010 which did not come to the notice of petitioner. Hence, under the impression that I.A.No.833 of 2010 has been misplaced among court records petitioner filed W.P.(C) No.8641/2010 I.A.No.898 of 2010 for the same relief. Bu that application was dismissed for the reason that I.A.No.833 of 2010 was rejected. Hence Exts.P4 and P5, orders are challenged in this Writ Petition. Learned counsel contends that examination of expert is essential to prove case of petitioner.

3. I am not going into the controversy whether I.A.No.833 of 2010 was disposed of by learned Sub Judge in open court. It is seen that application was rejected for the mere reason that it is belated. Having regard to the facts and circumstances of the case I am persuaded to think that learned Sub Judge ought to have considered I.A.No.833 of 2010 on merit rather than rejecting the same as belated and thereby foreclosing right of petitioner to examine expert. Ext.P4, order on I.A.No.833 of 2010 therefore is liable to be set aside. Since it is for same relief that I.A.No.898 of 2010 is filed and I have held that Ext.P4, order is liable to be set aside it is not necessary to interfere with Ext.P5, order.

Resultantly the Writ Petition is allowed and Ext.P4, order on I.A.No.833 of 2010 is set aside. Learned Sub Judge is directed to consider that application on merit and pass appropriate orders as to the prayer of petitioner to summon expert for examination.

THOMAS P.JOSEPH, Judge.

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