

IN THE COURT OF THE SUB JUDGE, CHENGANNUR

Present:- Smt.Veena.V.S, Sub Judge

Saturday, the 7th September, 2024/ 16th Bhadrapadam 1946

IA No. 15/2024 in OS No. 26/2023

(Filed on: 29.08.2024)

Petitioner/Addl. 9th Defendant :- Sushama .M.Nair, aged 64 years,
D/o. Late Rugmini Amma,
Sumangali, Kakkethu,
Kuttemperoor.P.O
Mannar Village, Pin: 689 623.

(Adv. Abu.M.H)

Cr.Petitioners/Plaintiffs:-
Defendants (D1 to D8)

1. Sarika.N.Nair, aged 56 years,
D/o. Late Radhamma.M
Resident of Sreevinayaka,
Elakamon Muri,
Ayroor Village, Varkala Taluk
Pin: 695 310.
2. Mallika.N.Nair, aged 65 years,
D/o. Late Radhamma.M
KMC 12/989, Nr.KBC Club,
KBC Junction, Maruthady,
Kavanad.P.O, 691003, Kollam

3. Chandrika.N.Nair, aged 61years,
D/o. Late Radhamma.M
Resident of Sree Janardhanam,
Elakamon Muri,
Ayroor Village,Varkala Taluk
Pin: 695 310.
4. Lathikala.N.Nair,
D/o. Radhamma, aged 58 years,
House wife, Nechattu House,
Madappally.P.O, Thengana
Chenganasseri, Alappuzha.
5. Ajithakumari.N.Nair, aged 54 years,
D/o. Late Radhamma.M
Resident of Sreenandanam,
Karunilakode Muri,
Ayroor Village Varkala Taluk,
Pin: 695 310.
6. Manikuttan Nair, aged 69 years,
S/o. CG Raghavan Nair,
Thriveni
Muttom.P.O, Kanichnalloor Muri,
Cheppad Village
Karthikapally Taluk.

7. Somarajan Nair, aged 66 years,
S/o. CG Raghavan Nair,
Presanthi, Kuttemperoor.P.O,
Mannar Village,
Chengannur Taluk, Pin: 689 623.
8. Rugmini Amma, aged 90 years,
D/o. Madhaviamma, Pensioner
Sreenilayam, Kuttemperoor P.O,
Mannar Village (deceased)
9. Vidyadharan Nair, aged 74 years,
S/o. CG Raghavan Nair, Pensioner
Sreenilayam, Kuttemperoor.P.O
Mannar Village.
10. Jagatheesh Sreenivasan,
S/o. Late Rajamma, 64 years
Krishna Kripa,
Kalady, Trivandrum.
11. Jayakumar Sreenivasan,
aged 60 years
Krishna Kripa,
Kalady, Trivandrum [Exparte]

12. The Branch Manager,
Life Insurance Corporation of India,
Satellite Office (CLIA), Centre Point,
KPM Road, Kayamkulam 690502
(Deleted as per order in IA 12/24
dtd.07.09.24)
13. The Manager,
The Federal Bank Ltd.,
Chennithala.P.O, Chennithala Branch
Mavelikara Taluk (Deleted as per
order in IA 12/24 dtd.07.09.24)

***(Cr.Petitioner 1 to 5- By Adv.Akhil.R.Kurup
Cr.Petitioner 6 to 9 – By Adv. P.G.Daniel)***

This petition having been finally heard on 31.08.2024 and the court on 07.09.2024 passed the following.

ORDER

The petition is filed under Sec. 28 r/w Sec. 29 of the Mediation Act 2023 and Sec. 151 of CPC.

Petition averments in brief are as follows:

2. The 9th defendant in the above case is the petitioner. The suit is for declaration and partition of the deposits and assets of deceased Padmavathy Amma who died intestate. The plaintiffs and the defendants except banks are

children of the deceased 3 sisters of late Padmavathy Amma. When the case was referred to mediation, the petitioner was present on 22-06-2024. On that date it was adjourned to 20-07-2024. She could not attend on that date. Later, she came to know that a settlement agreement was purposefully reached and mediation report was produced before the court. Then said mediation report was obtained by fraud and misrepresentation. The petitioner was mislead and concealed the terms and conditions of the agreement which was illegal. The plaintiffs, defendants and their counsel colluded and engaged a new counsel for the plaintiffs without relinquishing the earlier engagements. In the said mediation agreement, the defendants 1, 2, 4 and 5 have unilaterally decided to pay Rs. 17,00,000/- (Rupees Seventeen lakhs only) from the deposit of the deceased Padmavathy Amma to the plaintiffs and to remove the additional 9th defendant from the party array who is legally entitled for a share from the deposits of Padmavathy Amma. Then the plaintiff filed a petition to remove the 9th defendant from the party array to keep her away from the share of the above deposits. They never consulted additional 9th defendant regarding the settlement and the petitioner did not consent to the terms of the settlement. The mediation process was conducted in a manner that denied the petitioner a fair opportunity to present her case. Hence it is highly necessary to set aside the mediation report dated 23.07.2024 and to hold the cheque till the disposal of the petition.

3. The plaintiffs and defendants 1, 2 and 4 filed objection by contending that the petition is not maintainable either in law or on facts. The plaintiffs counsel is the husband of the 9th defendant. In the private discussion between the contesting defendant and the plaintiff, the contesting defendant agreed to pay Rs. 17,00,000/- (Rupees seventeen lakhs only) to the plaintiff as the 1/3rd share in the assets of late Padmavathy Amma. When they informed the same to the mediator the 9th defendant did not raise any objection. In the written statement also the 9th defendant stated that the plaintiffs are entitled to 1/3rd share in the assets of deceased Padmavathy Amma on 20.07.2024. Mediation agreement was executed by all plaintiffs and all contesting defendants. In the mediation agreement it is stated that uncontested defendants should be removed from the party array. So the plaintiffs contacted their counsel and requested to remove the 9th defendant and other uncontested defendants from the party array. But he refused to do so. Since the plaintiff's counsel relinquished their vakalath, the plaintiffs engaged another Advocate for conducting their case. The 9th defendant was an uncontested party. For the aforesaid reasons the petition may be dismissed.

4. From the above petition averments and contentions in the objection the following points were raised for consideration.

1. Whether the mediation agreement is liable to be set aside as prayed for?

2. Reliefs and cost?

5. There is no evidence adduced from either side.

6. Heard both sides. Perused the records.

Points No. 1 and 2

7. The suit is for declaring 1/3rd share of the plaintiffs over the property of late Padmavathy Amma. The matter was referred to mediation. The mediation agreement was produced before the court. The court adjourned the case for verification to 08.08.2024. On perusal of the said agreement it is found that all parties in the suit were not signed in the mediation agreement. The plaintiff filed a petition to remove the non signatory party from the party array of the suit. The 9th defendant who claimed to be one of the legal heirs challenged the mediation agreement by contending that she did not agree the terms in the mediation agreement. She did not put signature in the mediation agreement and thereby it is not at all admissible. The plaintiff and the defendants 1, 2 and 4 contended that 9th defendant is not a contesting party in the suit. She filed written statement by admitting the plaint averments including 1/3rd right of the plaintiffs over the plaint schedule property. But I am of view that the admission of the 9th defendant regarding the right of the plaintiff in her written statement is not a ground to exclude her from the mediation agreement or remove her from the party array of the plaint. Because admittedly she is a necessary party in the suit.

8. It is the settled legal position that all parties should be signed in the mediation agreement without which the mediation agreement does not have any validity. If all the parties in the suit are not signatories in the mediation agreement, the court cannot pass a compromise decree on the basis of the said mediation agreement. Admittedly, 9th defendant is one of the co-sharers. So she must be a party in the mediation agreement irrespective of the fact whether she admitted or denied the plaint averments before court. In the absence of the signature of the 9th defendant, the court cannot act upon the mediation agreement and no compromise decree can be passed as per the terms and conditions mentioned in the compromise entered between some of the parties in the suit. So the mediation agreement is not at all acceptable without the signature of all parties in the suit.

9. The prayer in the petition is to set aside the mediation agreement. On perusal of the case records it made clear that the court has not acted upon the said mediation agreement even though the court observed that a mediation agreement is filed. No compromise decree was passed as per the terms in the mediation agreement. At this juncture, there is no need to set aside the mediation agreement filed before the court. The court can reject the mediation agreement on the ground that all the parties in the suit did not put signature therein and there is no consensus ad idem upon the terms in the said agreement. With the said observation the prayer in the petition is rejected.

In the result, the petition is dismissed. No order as to costs.

Dictated to the confidential Assistant, transcribed and typed by her, corrected by me and pronounced in Open Court on this the 7th day of September 2024.

Sd/-
Veena. V.S
Sub Judge

Appendix : NIL

Id/-
Sub Judge

//True Copy//

Sub Judge

Typed By: Sandhya
Comp.d By: Hedwin