

IN THE COURT OF THE CIVIL JUDGE (SENIOR DIVISION),MUVATTUPUZHA

Present:- Sri. Atheek Rahman, Civil Judge (Senior Division)

Tuesday, the 5th day of November, 2024 / 14th Karthika 1946

I.A.No. 19/2024 in O.S No.6/2019

Petitioner/ Defendant:-

C.P. Pappachan, aged 69 years, S/o Kochappu, Chakiath House,
Thundathumkadavu, Varapuzha P.O, Ernakulam District
– 683 517.

By Adv. Yash Thomas Mannully & Soman P Paul

Respondent/Plaintiff:-

Jose K.J, aged 45 years, S/o P.O. Francis Kannathukuzhi House,
Perumbaloor P.O, Maradi, Ernakulam District.

By Adv. Sayed M Thangal, Febin Raj T.S & Sruthi Das

This petition is filed under Order XIV Rule 5 Read With Section 151 of the Code of Civil Procedure, 1908 to frame additional issues in O.S No.6/2019 and is coming on for hearing on 05.11.2024 in the presence of the above counsel and the Court on the same day passed the following:-

ORDER

This petition is filed by the petitioner/defendant under Order XIV Rule 5 and Section 151 of the Code of Civil Procedure, 1908 to frame additional issue. The petition is supported by an affidavit sworn by the petitioner/defendant. It is averred that the petitioner filed petition to recall PW1 and to produce his original SSLC book. But, he filed counter affidavit

stating that SSLC book has been irrecoverably lost. It is also stated by PW1 that he studied in the Government High School Muvattupuzha during the period 1979-1980. The plaintiff is regularly using false identities for fraudulent activities. He is a convict in CC 133/2018 on the files of the Additional, CJM, Eranakulam. The plaintiff filed the suit with false identity and it will amount to synthetic identity fraud. Hence, it is highly essential to settle an additional issue regarding the identity fraud and filing of plaint, affidavit and documents with false identity.

2. The respondent/plaintiff filed objection stating that the petition is not maintainable either in law or on facts. Further, it is contented that the averments in paragraph 4 of the affidavit in support of the petition is not correct. PW5 clearly deposed in his examination that the official name of the plaintiff is Jose K J. The respondent produced the driving licence and pan card as per the direction of this Court in IA 05/21. The date of birth in both documents are different. It is a clerical mistake. Since these errors don't affect the plaintiff's day today activities, he never attempted to correct the mistake. The plaintiff studied in Nirmala L.P school Muvattupuzha upto 4th standard and he completed 10th standard from the Government High School Muvattupuzha. It is admitted that in

CC 133/2018 the Additional Chief Judicial Magistrate Court, Ernakulam convicted the plaintiff. But, appeal is pending against the said judgment before the Hon'ble Additional Sessions Court, Ernakulam. This court already settled issues and plaintiff adduced his evidence. Now, the case is posted for further evidence of the defendant. So far, the defendant's sole contention is that the plaintiff's age is incorrect, rather than disputing the father's name. The age of the plaintiff stated in the plaint is 45 instead of 54. It is a clerical mistake. The name of the father of the respondent is K.M.Joseph. So, the clerical mistake cannot be treated as impersonation or false identity. The subject matter of the suit is realisation of money based on a dishonoured cheque. Hence, it is not necessary to frame additional issue as claimed and the respondent prayed to dismiss the petition.

3. Both sides were heard.

4. The point that raised for consideration is as follows:

Is it necessary to settle an issue regarding impersonation allegedly committed by the plaintiff as alleged by the defendant?

5. The point:- The suit is filed for realisation of money based on three dishonoured cheques. Required issues were settled. Trial of the issues started and now, the case is posted for further evidence of the defendant. During this stage, the present petition is filed by the defendant. The contention of the defendant is that the plaintiff filed the suit with false identity details. Hence, it is highly essential to frame an additional issue regarding the fraud and filing of plaint and affidavit with false identity. In order to support the contention of the defendant, he is contending that in the evidence of PW5 it has revealed that the name of the plaintiff is Joseph Joseph as per family details in the family journal directory published under him in 2014. In the directory, the birth year of the plaintiff is shown as 1962 while the date of birth is 20.09.1964 as per driving licence and 24.09.1964 as per PAN card and Aadhaar card. The defendant also contended that he made enquiry with Nirmala L.P School, Muvattupuzha and realised that the name of the person appeared as plaintiff in the suit with Jose K.J, S/o.Mathai Joseph, Kanathukuzhi, Peringazha with date of birth 20.09.1961 appeared for the SSLC examination from the Government High School Muvattupuzha in the year 1980 and not from the Nirmala High School Muvattupuzha during the

year 1978-1979. The plaintiff filed plaint and affidavit using false identity. The plaintiff created the identity as 'Jose Joseph' for taking loan from different banks and the Ernakulam Town South Police Station registered a crime against the plaintiff for offences punishable under Section 468, 471, 511 and 420 of the Indian Penal Code. Pursuant to the filing of the final report, the Additional Chief Judicial Magistrate Court took the case on file as CC 133/2018 and after trial, the plaintiff was convicted. Here in this case also plaintiff filed the suit, affidavits in support of the petitions and documents using false identity and it is highly essential to frame an additional issue regarding the said fact. Nowhere in the plaint or petitions the plaintiff has not disclosed the name of his father. In the restoration petition the plaintiff stated that he is the son of P O Francis. But, now he filed petition for amending the address portion incorporating the name of his father as K.M. Joseph. Moreover, he has not produced his SSLC certificate to establish his identity.

6. In turn, the learned counsel for the plaintiff submitted that all the allegations levelled against the plaintiff regarding false identity and impersonation is baseless. As per order in IA 05/2021, the petitioner produced his driving licence and pan card before this Court. The name of

the plaintiff is Jose K J and his father's name is K M Joseph. PW5 deposed that the plaintiff is his cousin brother and the official name of the plaintiff is Jose K.J. The mistake in the date of birth in the Aadhaar card and PAN card is only a clerical mistake. Hence, there is no necessity to settle an additional issue regarding the identity of the plaintiff at the fag end of the suit. Further, the learned counsel for the plaintiff submitted that the defendant is trying to stall the proceedings by filing frivolous petitions.

7. In ***Ramathal v. Rajamani (Died) Through Lrs; 2023 KHC***

6788 the Hon'ble Supreme Court held that, *“The object and purpose of pleadings and issues is to ensure that the litigants come to trial with all issues clearly defined and to prevent cases being expanded or grounds being shifted during trial. Its object is also to ensure that each side is fully alive to the questions that are likely to be raised or considered so that they may have an opportunity of placing the relevant evidence appropriate to the issues before the court for its consideration. This Court has repeatedly held that the pleadings are meant to give to each side intimation of the case of the other so that it may be met, to enable courts to determine what is really at issue between the parties, and to prevent*

any deviation from the course which litigation on particular causes must take."

8. I have perused the records. In the first paragraph of the written statement there is contention regarding the impersonation of the plaintiff. My learned predecessor in office after considering the rival contentions and verification of documents produced, settled four issues as follows: (i) Whether the defendant executed three cheques in favour of the plaintiff as claimed? (ii) Whether the plaintiff forged signature of the defendant on cheques as alleged? (iii) Whether the plaintiff is entitled to realise ₹13,53,275/- (Rupees thirteen lakhs fifty three thousand two hundred and seventy five only) from the defendant? (iv) What is the order as to interest and costs?

9. The first issue takes in the contention and dispute raised by the defendant. The first issue clearly indicates the burden to prove the same on the plaintiff. Considering the dispute in the written statement, in order to succeed the said issue the plaintiff has to establish his identity also. So, I am of the view that there is no necessity to settle an additional issue to decide the *lis* as claimed by the defendant. So, the petition is

devoid of merit and it is liable to be dismissed. This point is answered accordingly against the petitioner/defendant.

In the result, the petition is dismissed. No costs.

Dictated to the Confdl.Asst., typed by her directly into the computer, corrected by me and pronounced in the Open Court on this the 5th day of November 2024.

Sd/-
ATHEEK RAHMAN
CIVIL JUDGE(SENIOR DIVISION)

APPENDIX :- Nil

Sd/-
CIVIL JUDGE(SENIOR DIVISION)

Typed by : Ss/-
Compd by : Bmm/-

// True Copy // (By Order)

Sheristadar

**Copy of Order
in I.A. 19/2024**

in O.S. 6/2019

Dated: 05.11.2024