

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

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

Monday, the 11th day of November, 2024 / 20th Karthika 1946

I.A.No. 18/2024 in O.S No.6/2019

Petitioner/ Defendant:-

C.P. Pappachan, aged 67 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 Section 30 and Order XI Rule 14 Read
With Section 151 of the Code of Civil Procedure,1908 for accepting the
additional list of witness and direct to produce documents and is coming on
for hearing on 11.11.2024 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 Section 30,
Order XI Rule 14 r/w Section 151 of the CPC to accept the additional witness
list and issue summons directing the witnesses to produce the documents
mentioned therein.

2. The respondent/plaintiff filed objection stating that the petition is not maintainable. The suit is filed for realisation of money based on three cheques. In order to prove the identity he has produced pan card, Aadhar card and other relevant records. Further, the examination of the witnesses mentioned in the additional list is not relevant and unwarranted. Hence, he prayed to dismiss the petition.

3. Both sides were heard.

4. The contention of the petitioner is that, he filed a petition to recall PW1 and to produce his SSLC book. But, he filed affidavit stating that his SSLC book is irrecoverably lost. But, on enquiry it is revealed that the facts mentioned in the affidavit filed by the respondent is false. The person named K.J. Jose, S/o Mathai Joseph was appeared for SSLC examination from the Nirmala School and not from the Government High School, Muvattupuzha. The respondent committed synthetic fraud identity. The Headmaster of the Government High School, Muvattupuzha was summoned to produce documents. But, he stated that the documents are not available. Thereafter, another petition filed to issue summons to the Headmaster to produce the admission details of Jose. K.J. However, he filed affidavit stating that the registers were lost in the flood of 2018. It has

come out in evidence of PW5 that the name of the respondent is Joseph Joseph as per the directory published by their family. In the said directory, it is mentioned that the respondent born in 1962. But, in the driving licence the date of birth is 24.09.1964. In the pan card and Aadhar card the date of birth is 24.09.1964. Hence, the Headmaster, Nirmala High School is to be summoned to produce relevant admission register and Duplicate register containing the name of the candidate with name Jose K.J, S/o Mathayi Joseph with date of birth 20.09.1961 joined in class V during the academic year 1973-74. Furthermore, issue summons to the Manager, State Bank of India, Vyttila branch to produce the certified copy of loan application form, account opening form, identity documents and deeds submitted by Jose Joseph for availing loan for PW5 in CC 133/2018 on the files of the Additional Chief Judicial Magistrate Court, Eranakulam, and the Branch Manager, Canara Bank, Kadavanthara to produce the certified copy of loan application, account opening form, identity documents and deeds submitted for which FIR was registered in CC No.133/2018. These documents are essential for filing criminal prosecution.

5. Refuting the contentions of the petitioner, the respondent contended that the summoning of witnesses is unnecessary. PW5 is the cousin brother and he deposed that the name of the respondent is Jose K.J. As per the direction in IA No.05/2021, the respondent produced the driving licence, Aadhar card, voters identity card, original pass book of account maintained with HDFC bank and pan card. Hence, the respondent prayed to dismiss the petition.

6. I have perused the records. After completing pre-trial steps, the trial of the settled issues started on 07.03.2023, including in the special list and it is going on. After completing the evidence of the plaintiff, the defendant was examined as DW1 and one witness was examined as DW2. Now the case is posted for further evidence of the defendant. During this stage, the present petition is filed. The certified copies of the judgment in CC 133/2018 of the Additional Chief Judicial Magistrate Court, Ernakulam, Vakalath filed by the respondent in the said case, Form 51 filed by the police in the said case, statement of account of JK Associates which was marked as Ext. P2 in the above case, certified copy of deed No. 2395/05 which was marked as Ext. P4 in the above case and a copy of entires in a book allegedly taken from Nirmala LP School

are produced along with IA 18/2024 with a prayer to receive the same. The said petition is dismissed on merit as those documents are not relevant for the disposal of the case.

7. In the affidavit, it is stated that the purpose of issuing summons to the witnesses is because the documents are highly essential for the purpose of criminal prosecution. It is obvious from the said averment that the documents sought are not relevant for the purpose of deciding the suit. The petitioner is conducting a fishing enquiry in the suit which cannot be permitted.

8. The suit is filed for realisation of money based on three cheques allegedly issued by the petitioner. The petitioner took a contention that he had not issued the cheques to the respondent and the respondent approached this court by impersonation. The petitioner disputing the execution of the three cheques involved in this case. My learned predecessor in office settled four issues as follows:- 1) Whether the defendant executed three cheques in favour of the plaintiff as claimed? 2) Whether the plaintiff forged signature of defendant on cheques as alleged? 3) Whether the plaintiff is entitled to realise Rs. 13,53,275/- as from the defendant? 4) What is the order as to interest and costs?

9. The parties to a proceeding are permitted to give evidence of facts in issue and relevant fact as per Section 5 of the Indian Evidence Act. As per Section 52 of the Indian Evidence Act, in civil cases character to prove conduct imputed is irrelevant. As I have already discussed above, the petition to receive the additional documents is dismissed since those documents are not relevant to decide the suit. Hence, I am of the view that there is no necessity to summon the additional witnesses mentioned in the petition.

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

Dictated to the Confidential Assistant, typed by her directly into computer, corrected by me and pronounced in the Open Court on this the 11th 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. 18/2024

in O.S. 6/2019

Dated: 11.11.2024