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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE BASANT BALAJI

FRIDAY, THE 7TH DAY OF MARCH 2025 / 16TH PHALGUNA, 1946O.P. (C) NO.1390 OF 2024(AGAINST THE ORDER/JUDGMENT DATED 26.06.2024 IN CS NO.14 OF 2023
OF ASSISTANT SESSIONS COURT/SUB COURT/COMMERCIAL COURT, CHAVAKKAD)PETITIONER/1ST DEFENDANT:

SHOY, AGED 46 YEARS, S/O MATHEW, RESIDING IN THE ADDRESS
CHERUVATHOOR HOUSE, MENCHERY PARAYIL, KUNNAMKULAM VILLAGE
DESOM, KUNNAMKULAM P O, KUNNAMKULAM TALUK,
THRISSUR DISTRICT, PIN - 680 503

BY ADV G.SREEKUMAR (CHELUR)

RESPONDENTS/PLAINTIFF AND 2ND DEFENDANT:

- 1 DAVI, AGED 64 YEARS, S/O PAPPACHAN, RESIDING IN THE ADDRESS
CHERUVATHOOR HOUSE, KUNNAMKULAM VILLAGE DESOM,
KUNNAMKULAM P O, KUNNAMKULAM TALUK,
THRISSUR DISTRICT, PIN - 680 503
- 2 SHOBY, AGED 50 YEARS, D/O MATHEW AND W/O KAROTTE PUTHANPURA
PYAS THOMAS, RESIDING IN THE ADDRESS CHERUVATHOOR HOUSE,
MENCHERY PARAYIL, KUNNAMKULAM VILLAGE DESOM,
KUNNAMKULAM P O, KUNNAMKULAM TALUK,
THRISSUR DISTRICT, PIN - 680 503

BY ADVS.
M P ASHOK KUMAR
BINDU SREEDHAR(K/000317/2002)
ASIF N(K/001564/2018)

THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 3.7.2024, THE COURT
ON 07.03.2025 DELIVERED THE FOLLOWING:



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JUDGMENT(Dated:7th March, 2025)

The petitioner is the 1st defendant in C.S.No.14 of 2023, presently pending before the Commercial Court, Chavakkad, which was originally filed before the Commercial Court, Thrissur, as C.S.No.179 of 2021. The suit was filed for a decree of specific performance, and in the alternative, seeking realization of an amount of Rs.3,20,50,000/- with interest at the rate of 12% per annum from 06.11.2019, and also seeking compensation to the tune of Rs.1 Crore.

2. The case of the plaintiff is that an agreement dated 06.11.2019 was entered into between the plaintiff and the father of the defendants for the sale of half right in the plaint schedule property, and an amount of Rs.3,20,50,000/- was received by the father of the defendants to bring the litigation to an end. A written statement is filed by the 1st defendant contending that the agreement dated



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06.11.2019 is a fabricated document since the signature varied, and there is also rewriting, moreover the thumb impression is also different. The petitioner as part of abundant caution, filed an application to send the alleged agreement dated 06.11.2019 under Order 26 Rule 10 (A) read with Section 151 CPC, to send the thumb impression and handwriting for comparison with the release deed No.1676/2019, 1861/2019 and the registered will No.140/2016 of Kunnankulam Sub Register Office, for report of the expert regarding the authorship of the signature and thumb impression. An objection was filed as Ext.P5 in the said application, and the court below by Ext.P6 dismissed the application holding that the defendants admitted the signature in paragraphs 20 and 33 of the written statement. The only contention raised is that the signature was put in two stamp papers worth Rs.100/- brought by the plaintiff for the execution of an agreement for payment of Rs.5 lakhs alone. The court below held that



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if one such signature is admitted, the same need not be sent for expert opinion.

3. It is a fact that the plaintiff has to plead and prove the allegations for obtaining a decree in a suit. The document relied on by the plaintiff is the agreement dated 06.11.2019. The defendant disputes the same and contends that it is a fabricated document. When such contention is taken, the burden of proof is on the plaintiff to prove the execution as well as the content of the document. In such circumstances, since there is an admission by the defendant in the written statement, regarding the signature, I am of the considered opinion that sending the disputed agreement for expert opinion, regarding the authorship of the signature and thumb impression, is not required. The learned Commercial Court also found that the pleadings are inconsistent in both paragraphs 20 and 33.

4. The counsel for the respondents had raised a question of



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the maintainability of this original petition under Article 227 of the constitution of India and argued under Section 13(2) of the Commercial Courts Act that no appeal shall lie from any order or decree of a commercial division or commercial court otherwise than in accordance with the provision of the Act.

5. To counter this, the counsel for the petitioner had argued that the proviso to Section 13 (1) and (1A) makes it clear that an appeal is provided only from such orders passed by the Commercial Division or a Commercial Court which are enumerated under Order XLIII of the Code of Civil Procedure, 1908, as amended by this Court under Section 37 of the Arbitration and Conciliation Act. An application under Order 26 C.P.C. is not appealable under Order 43. Therefore, the present petition under Article 227 is maintainable.

I have gone through the plaint, written statement, the application for sending the document to an expert and the order



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passed as Ext.P6 and I am of the firm opinion that the commercial court is justified in dismissing the application for the reasons stated above.

In the result, O.P. (C) stands dismissed.

Sd/-

**BASANT BALAJI,
JUDGE**

SS



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APPENDIX OF OP(C) 1390/2024

PETITIONER EXHIBITS

Exhibit P1	A TRUE COPY OF THE PLAINT IN C S NO. 14 OF 2023 PRESENTLY PENDING BEFORE THE COMMERCIAL COURT, CHAVAKKAD AND ORIGINALLY FILED BEFORE THE COMMERCIAL COURT, THRISSUR AS C S NO. 179 OF 2021 FILED DATED 28.04.2021
Exhibit P2	TRUE COPY OF THE WRITTEN STATEMENT IN EXT P1 SUIT FILED DATED 03.11.2021
Exhibit P3	TRUE COPY OF THE DISPUTED AGREEMENT DATED 06.11.2019
Exhibit P4	TRUE COPY OF I A NO. 11 OF 2024 IN C S NO. 14 OF 2023 ON THE FILE OF THE COMMERCIAL COURT, CHAVAKKAD FILED DATED 26.05.2024
Exhibit P5	TRUE COPY OF THE OBJECTION FILED BY THE 1ST RESPONDENT HEREIN AGAINST EXT P4 FILED DATED 05.06.2024
Exhibit P6	TRUE COPY OF THE ORDER PASSED BY THE COMMERCIAL COURT, CHAVAKKAD IN I A NO. 11 OF 2024 IN C S NO. 14 OF 2023 DATED 26.06.2024