

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

FRIDAY, THE 31ST DAY OF JULY 2015/9TH SRAVANA, 1937

Crl.MC.No. 4097 of 2015 ()

AGAINST THE ORDER IN C.M.P IN MC 42/2013 of J.M.F.C.,KOLENCHERRY
DATED 03-09-2013

PETITIONERS/STRANGERS IN M.C. 42/2013:

1. PATHUMMA, AGED 51 YEARS, D/O.IBRAHIM,
RESIDING AT PUTHANPURAYIL HOUSE,
UDUMBANNOOR VILLAGE, IDUKKI,
NOW RESIDING AT KOIKKAL HOUSE,
BRAHMAPURAM P.O, PUTHENCROUZ VILLAGE,
KUNNATHUNADU TALUK, ERNAKULAM DISTRICT – 682 311.
2. SARAKUTTY, AGED 62 YEARS,
W/O.LATE IBRAHIM, RESIDING AT PUTHENPURAYIL HOUSE,
UDUMBANNOR KARA, UDUMBANNOR VILLAGE,
THODUPUZHA TALUK,
PRESENTLY RESIDING AT KADALIPPARAMBIL HOUSE, EDAVETTI P.O,
EDAVATTY KARA,
EDAVATTY VILLAGE, THODUPUZHA TALUK,
PIN – 685 565.

BY ADVS.SRI.PEEYUS A.KOTTAM
SRI.O.S.JAFARKHAN

RESPONDENTS/PETITIONERS/RESPONDENTS/STATE:

1. SAINABA, AGED 39 YEARS, W/O.P.E. ABDUL SALAM,
PUTHENPURAYIL, UDUMBANNOOR, IDUKKI NOW RESIDING AT
KOIKKAL HOUSE, BRAHMAPURAM P.O, PUTHENCROUZ – 682 111.
2. ADINA SALIM, AGED 10 YEARS, (MINOR),
D/O.P.E. ABDUL SALIM, PUTHENPURAYIL HOUSE, UDUMBANNOOR
VILLAGE, IDUKKI NOW RESIDING AT KOIKKAL HOUSE,
BRAHMAPURAM P.O, PUTHENCROUZ VILLAGE, KUNNATHUNADU TALUK,
ERNAKULAM DISTRICT, REPRESENTED BY THE 1ST APPLICANT, WHO IS
HER MOTHER AND NEXT FRIEND.
3. P.E. ABDUL SALAM, AGED 40 YEARS,S/O.IBRAHIM, RESIDING AT
PUTHENPURAYIL HOUSE, UDUMBANNOOR P.O, IDUKKI DISTRICT,
IDUKKI – 685595.
4. STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM, COCHIN- 682 016.
R BY PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 31-07-
2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

APPENDIX

PETITIONERS EXHIBITS:

ANNEXURE A1: TRUE COPY OF THE PARTITION DEED NO.761/2013 DATED 27.3.2013 OF KARIKODE S.R.O.

ANNEXRE A2: TRUE COPY OF THE APPLICATION FILED AS M.C. NO.42/2013 UNDER SECTION 12 OF THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT 2005 BY THE 1ST AND 2ND RESPONDENTS

ANNEXURE A3: TRUE COPY OF THE ORDER DATED 3.9.2013 OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT, KOLENCHERRY IN CMP NO.1212/2013 IN M.C. NO.42 OF 2013.

ANNEXURE A4: TRUE COPY OF THE ORDER DATED 10.12.2013 OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT, KOLENCHERRY IN CMP NO.2815/2013 IN M.C. 42/2013

RESPONDENTS EXHIBITS:

/TRUE COPY/

P.S TO JUDGE

P.UBAID, J.
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**Crl.M.C No.4097 of 2015**  
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Dated this the 31st July, 2015

ORDER

The petitioners herein challenge an interim order passed by the Judicial First Class Magistrate's Court, Kolancherry under Section 23 of the Protection of Women from Domestic Violence Act (for short "D.V Act"). The petitioners are not parties to the said proceeding. The learned Magistrate granted an interim order against alienation in favour of the respondents 1 and 2 herein. The main proceeding brought under Section 12 of the D.V Act is pending as M.C No.42 of 2013. The 3rd respondent herein is the respondent in M.C.42 of 2013. He filed an application as C.M.P No.2815/2013 for cancellation of the prohibitory order amounting to an order of injunction. The learned Magistrate dismissed the said application by order dated 10.12.2013 on the ground that the court has already clarified that the interim order dated 3.9.2013 is only regarding alienation of 16.19 ares of property in a particular survey number. The said order dated 10.12.2013 is

challenged by the petitioners, who are not parties to the said proceeding.

2. On a perusal of the impugned order and on hearing the learned counsel for respondents 1 and 2 herein, I find that interference by this Court under Section 482 is not necessary. The case of the petitioners is that the 3rd respondent has only 1/3rd share in the property. It is made clear that the interim order passed by the learned Magistrate will not stand in the way of the petitioners pursuing appropriate civil remedies before the competent civil court. Whatever orders passed by the Court of the Magistrate under Section 12 or 23 of the D.V Act, will be subject the orders and decrees passed by the competent civil court as regards the properties involved in the litigation. The interim order passed by the learned Magistrate will be subject to the final orders to be passed in the main proceeding. Now it is submitted by the learned counsel for respondents that the learned Magistrate has already recorded evidence in the main proceeding. In such a situation, it is appropriate that the main proceeding itself

be disposed of by the learned Magistrate. While granting orders under the D.V Act, the learned Magistrate will have to insist on production of necessary materials and documents, when orders as regards properties are sought by the petitioners. If any order regarding immovable properties is sought, including order against alienation, the court will have to be satisfied that the said property actually belongs to the respondent. Without being satisfied of the necessary aspects, the court will not pass any order under Section 12 of the D.V Act. Anyway, I find that the real dispute can be resolved in the main proceeding by the learned Magistrate. It is pertinent to note that the interim order passed by the learned Magistrate under section 23 of the D.V Act is not under challenge by way of appeal under Section 29 of the D.V Act.

In the result, this Crl.M.C is dismissed *in limine*, without being admitted to files with observation that the petitioners can pursue appropriate civil remedy.

**Sd/-
P.UBAID
JUDGE**

ma /True copy/

P.S to Judge