

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM
&
THE HONOURABLE MRS. JUSTICE MARY JOSEPH**

FRIDAY, THE 11TH DAY OF SEPTEMBER 2015/20TH BHADRA, 1937

Mat.Appeal.No. 464 of 2015 ()

**AGAINST THE ORDER DATED 28-01-2015 IN I.A No.1031/2014 IN
OP(HMA) No. 1152/2013 OF
FAMILY COURT, THIRUVANANTHAPURAM**

APPELLANT/PETITIONER/RESPONDENT:

**KRISHNA MOORTHY,
AGED 60 YEARS, S/O.SUNDER RAJ,
TC 26/1718, UNNIS LANE
PULIMOOD, GPO, THIRUVANANTHAPURAM**

BY ADV. SRI. PNARAYANAN

RESPONDENTS/RESPONDENTS/PETITIONERS:

- 1. SOUMYA KRISHNAN
D/O.KRISHNAMOORTHY, SAROVARAM, CRA 181,
CHEMPAKASSERY JUNCTION, PERUMTHANNI
THIRUVANANTHAPURAM.**
- 2. NANDAKUMAR
S/O. KRISHNAMOORTHY, SARAOVARAM, CRA 181,
CHEMPAKASSERY JUNCTION, PERUMTHANNI
THIRUVANANTHAPURAM**

R1 & 2 BY ADV. SRI.SHAJIN S.HAMEED

**THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD ON 11-09-
2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

AMG

**C.K. ABDUL REHIM, J.
&
MARY JOSEPH, J.**

Mat. Appeal No. 464 OF 2015

DATED THIS THE 11th DAY OF SEPTEMBER, 2015

J U D G M E N T

C.K. Abdul Rehim, J:

In this Mat. Appeal, which is filed by the respondent before the Family court, the challenge is against an order passed in IA No.1031/2014 in OP (HMA) No.1152/2013. The case before the Family Court was instituted by the respondents herein seeking declaration of 1/3rd right for each of them in the scheduled properties and for recovery of an amount of Rs.40,00,000/-, which the appellant had promised to pay for the marriage of the 1st respondent, along with another sum of Rs.5,00,000/- towards compensation. The appellant filed IA No.1031/2014 questioning maintainability of the original petition. It is contended that, the original petition instituted under Section 7 (c) of the Family Courts Act can be maintained

before that court only if it is between parties to the marriage. Since the respondents herein, who are the petitioners before the Family Court, are not parties to the marriage, the original petition is not maintainable before the Family Court, was the contention raised. The Family Court on consideration of the interim application, passed the impugned order holding that the claim advanced in the original petition arises out of the marital relationship and hence the case will fall under Section 7 (1) (c) & (d). Therefore it is found that the Family Court gets jurisdiction to entertain the original petition. The findings of the court below is assailed as legally unsustainable and totally erroneous.

2. Heard; counsel on both sides. Contentions of the learned counsel for the appellant is that, the parties in the original petition before the court below are not parties to the marriage and hence the suit instituted by them with respect to any property of the parties to the marriage or that of either of them, cannot be sustained. Contention is

that the suit will not fall within Explanation (c) of Section 7 (1) of the Act. He placed reliance on the decisions of this court in **Kamalasanan V. Valsala (1994 (1) KLT 373)** and in **Suprabha V. Sivaraman (2006) (1) KLT 712)**.

3. It is a fact that the original petition before the Family Court is not between the parties to the marriage. Hence the suit will not come within the purview of Explanation (c) to Section 7 (1). But a question arises as to whether the suit will be maintainable under Explanation (d) to Section 7 (1). For a proper appraisal, it is necessary to have a scanning of the cause of action agitated in the suit. Allegation levelled by the respondents herein before the Family Court is that, the appellant is not taking care of any of the needs of the respondents, who are his children. Marriage of the 1st respondent was solemnized on 15-09-2010 with the help of the mother of the respondents and her relatives with borrowings made from both. It is alleged that at the time of the marriage of the 1st respondent the

appellant had agreed to meet all the expenses, to the extent of Rs.40,00,000/-. Despite such promise made by the appellant in the presence of many persons and despite the fact that the appellant got huge amounts when he took voluntary retirement from the Bank, he had failed to make payment of any amount. It is further contended that the respondents have got right in the scheduled property upon which the appellant had derived title by virtue of a will executed by the appellant's mother. According to the respondents, each of them have got 1/3rd title and right over the said property. Hence they are approaching the court below seeking declaration of their 1/3rd right each in the said property and to recover the amounts mentioned as above.

4. Explanation (d) to Section 7 (1) illustrates that, any suit or proceedings referred to under Section 7 (1) would include suits or proceedings for an order or injunction in the circumstances arising out of a marital relationship. Scope and interpretation of Explanation (d) to

Section 7 (1) came up for consideration before a Division Bench of this court in **Leby Issac V. Leena M. Ninan (2005 (3) KLT 665)**. This court held that, the expression 'circumstances' means 'the surrounds of an act', as per Law Lexicon by P. Ramanatha Iyer, Reprint Edition, 1992. It also means 'the particulars which accompany an act.'. Reference was also made by this court to a foreign decision in **Salter V. State (163 Ga.80, 135 S.E.408,409)**. It was found that 'circumstances' in relation to a matrimonial relationship will be those particulars which closely precedes, surrounds, accompanies and follows a marital relationship. That means, primarily those can be the marriage itself and the surrounding occurrences in connection with marriage. The main requirement is that such 'circumstances' must have a direct bearing on the marriage because the marriage precedes the existence or origin of a 'marital relationship'. The 'circumstances' arising out of a marital relationship are therefore, occurrences or things which stands around or about, which attend upon,

which closely precede or follow, which surround and accompany, which depend upon, or which support or qualify the principal event of a marriage or marital relationship. The expression 'in circumstances arising out of a marital relationship' contained in clause (d) of the Explanation thus means not only those occurrences which transpired during the marital life, but should also include such circumstances which led to the marriage, which developed thereafter, which took place during marital life, which resulted in breaking down of the marriage and also those which closely followed as a consequence of all these. In the decision cited above, Justice Hema J., speaking for the Bench observed that, if the intention of the legislature was to take in only those circumstances which took place during marital relationship, there is no necessity to use word 'circumstances' in Explanation (d) to Section 7 (1) of the Act. Therefore the inclusion of word 'circumstance' in the relevant provision is quite significant and it must have been done to include all the circumstances surrounding,

preceding and closely following a marital relationship in which the principal event is the 'marriage' and the eventualities surrounding it.

5. Referring to the decision in **Leby Issac's case** (cited supra) a Division Bench in **Suprabha's case** (cited supra) observed that, the first part of Explanation (d) to Section 7 (1) will be satisfied, even though the Section does not mention anything about a decree for recovery of money as coming under the provisions of section 7 (1) (d). The meaning of the word 'circumstances' as found in Law Lexicon and Black's Law Dictionary will include those particulars which closely precedes, surrounds, accompanies or follows a marital relationship. It is observed that to attract clause (c) it should be a suit or proceedings between the parties to a marriage with respect to the property of the parties or the property of either of them. But to come under clause (d) it need only be a suit or proceedings for an order or for an injunction instituted under the circumstances arising out of the matrimonial relationship.

6. Referring to a decision of hon'ble Supreme Court in **Abdul Jaleel V. Shahida (2003 (2) KLT 403) (SC)** it is observed in **Suprabha's case** (cited supra) that, while construing Explanation (c) to Section 7 (1) the Supreme Court had found that, the clause is applicable even in cases where the marriage between the parties is not subsisting. The hon'ble apex court after referring to the statement of objects and reasons of the legislature held that, the Act inter alia extends jurisdiction of the Family Court to the properties of spouses or of either of them. In the case at hand, as enumerated above, the respondents had put forth a claim for declaration of title and right over the property in their status as children of the appellant herein. So also, they have put forth a claim for payment of marriage expenses of the 1st respondent and other claims for compensation. All such contentions can only be based on the factual situation that the appellant herein is their father, who is under a legal or moral obligation to meet such expenses. Therefore

it is evident that the cause of action agitated in the suit is connected with the matrimonial relationship between the appellant and the mother of the respondents. Hence it need to be considered that the cause of action is based on a 'circumstance' which is arising out of the marital relationship.

7. But learned counsel for the appellant placed heavy reliance on the observations contained in the decision in **Kamalasanan's case** (supra). In the said case, a learned Judge of this court while deciding the question of maintainability of a suit filed seeking for declaration that the defendant/father is bound to conduct marriage of his daughter and seeking mandatory injunction for directing him to provide sufficient funds for the marriage, held that the jurisdiction of the civil court is not ousted. There it is held that, matters enumerated under the Explanation to Section 7 (1) cannot be tried before any civil court. It is held that a suit for a declaration that the revision petitioner is bound to conduct marriage of the daughter and also for a

mandatory injunction to provide her with necessary funds for the marriage, would not come under any of the Explanations contained in (a) to (g) of Section 7 (1). Learned counsel for the appellant pointed out that, in **Suprabha's case** (cited supra) it is held that the decision in **Kamalasanan's case** (cited supra) to the effect that all matters not covered by Section 7 of the Act would come within the civil courts jurisdiction, is upheld. The discussions in **Suprabha's case** (cited supra) on this aspect is to the effect that the learned Judge in **Kamalasanan's case** (cited supra) found that, a suit for declaration to the effect that the father is bound to conduct marriage of the daughter and also for a mandatory injunction to provide her with necessary funds for the marriage, would not come under any of the provisions of Section 7 of the Family Courts Act. But at the same time in **Suprabha's case** (cited supra) it is held that the claim raised in the said case which is for recovery of value of gold ornaments, cash paid and other movables given at the time of marriage of Suprabha with

Santhosh S/o. Sivaraman is clearly associated with the marital relationship. Therefore learned counsel for the appellants contended that only those matters which are circumstances closely related to the marriage alone would be attracted under clause (d) of Section 7 (1). According to him the expenses with relation to the marriage of the daughter and the education expenses of the son are not closely related to the marriage or marital relationship. But this court cannot accept such a contention in view of the liberal interpretation given by a Bench of this court to the expression 'circumstances arising out of a matrimonial relationship' in the decision in **Leby Issac's case** (supra) which is followed by another Bench of this court in **Thomas V. Ponnama Thomas (2013 (4) KLT 43)**.

8. In fact, the learned Judge in **Kamalasanan's case** (cited supra) has not laid any dictum with respect to interpretation of clause 7 (d) and has not considered the scope and ambit of the wordings contained therein, "in the circumstance arising out of a marital relationship". But

learned counsel for the appellant had drawn our attention to paragraph 18 of **Thomas's case** (supra) to content that it was held that the suit by the legal heirs can proceed only if the parties to the marriage were originally parties to the suit. But such a dictum could not be evolved from the said decision, is the considered view of this court. It is also contended that the decision of the hon'ble Supreme Court in **Abdul Jaleel's case** (supra) does not establish any dictum to the extent as discussed above. But this court is convinced that the decisions in **Leby Issac's case** and in **Thomas's case** (both cited supra) had substantially clarified the position.

9. As already found, since the suit in question is clearly pertaining to a cause of action agitated based on the rights and obligations of the appellant which arises out of the marital relationship between the appellant and the mother of the respondents, it will clearly fall within Explanation (d) to Section 7 (1) of the Family Courts Act, because it is a suit/proceedings filed seeking an order “in

the circumstances arising out of a marital relationship.” Therefore we are inclined to hold that the original petition instituted before the Family Court is maintainable under clause (d) of the Explanation to 7 (1). Hence we do not find any illegality or infirmity in the order appealed against.

Consequently the appeal fails and the same is hereby dismissed.

Sd/-

C.K. ABDUL REHIM, JUDGE.

Sd/-

MARY JOSEPH, JUDGE.

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P.A. to Judge