

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 16TH DAY OF OCTOBER 2015/24TH ASWINA, 1937

Mat.Appeal.No. 966 of 2015 ()

ORDER DT.25-9-2015 IN I.A.NO.3539/2015 IN O.P.NO.1498/2015 OF THE FAMILY COURT,
ERNAKULAM

APPELLANTS/PETITIONERS :

1. K.BABUKUTTAN PILLAI, AGED 56 YEARS
S/O.LATE KUNJIKRISHNA PILLAI, AYINIKKATTUVEEDU
KIDANGAYAM, NORTH MYNAGAPILLY, KARUNAGAPPALLY
KOLLAM NOW R/A.SNOW VALLEY, WEST MORAKKALA
KUMARAPURAM, ERNAKULAM 683565
2. K VENUGOPAL AGED 52 YEARS
S/O.LATE KUNJIKRISHNA PILLAI, AYINIKATTUVEEDU
KIDANGAYAM, NORTH MYNAGAPILLY, KARUNAGAPALLY
KOLLAM

BY SRI.K.BABUKUTTAN PILLAI (PARTY-IN-PERSON)
K.V VENUGOPAL(PARTY-IN-PERSON)

RESPONDENT/RESPONDENT:

ANITHA KESAVADAS, AGED 46 YEARS
D/O.KESAVADAS, SRIVANI, PERANDOOR ROAD
KALOOR, KOCHI 17

R BY SRI.RAMANKARTHA FOR RESPONDENT (B/O)

THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD ON 16-10-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Mat.Appeal.No. 966 of 2015 ()

APPENDIX

PETITIONERS' ANNEXURES: NIL

RESPONDENT'S ANNEXURES:

ANNEXURE R1 : COPY OF THE LETTER DT.NIL SENT BY 1ST APPELLANT

ANNEXURE R2 : COPY OF THE SALE DEED NO.1587/1 OF SRO, PUTHENCROUZ DT.15.5.2002

ANNEXURE R3 : COPY OF THE SALE DEED NO.1588/1 OF SRO, PUTHENCROUZ DT.15.5.2002

ANNEXURE R4 : COPY OF THE ORDER DT.04.12.2009 ALONG WITH AGREEMENT
DT.30.11.2009 AS RECORDED BY THE FAMILY COURT, ERNAKULAM IN O.P.NO.1683 OF
2009

ANNEXURE R5 : COPY OF THE ORDER IN Tr.P.C.NO.4/2014 OF THE HONOURABLE HIGH
COURT DT.23.7.2015

ANNEXURE R6 : COPY OF THE ORIGINAL PETITION NO.592/2013 OF THE FAMILY COURT,
ERNAKULAM FILED BY THE PETITIONER DT.25.3.2013

ANNEXURE R7 : COPY OF THE ORIGINAL PETITION NO.1498/2015 OF THE FAMILY COURT,
ERNAKULAM DT.1.08.2015

ANNEXURE R8 : COPY OF THE AFFIDAVIT AND PETITION IN I.A.NO.3539/2015 IN
O.P.NO.1498 OF 2015 DT.4.9.2015

ANNEXURE R9 : COPY OF THE OBJECTION IN I.A.NO.3539/2015 IN O.P.NO.1498 OF 2015 OF
THE FAMILY COURT, ERNAKULAM DT.25.9.2015

ANNEXURE R10 : COPY OF THE ORIGINAL PETITION NO.554/2013 OF FAMILY COURT,
MUVATTUPUZHA DT.29.10.2013 (RE-NUMBERED AS O.P.NO.1754/2015 OF THE FAMILY
COURT, ERNAKULAM)

/TRUE COPY/

P.A TO JUDGE

AV

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

Mat. Appeal No. 966 OF 2015

DATED THIS THE 16th DAY OF OCTOBER, 2015

J U D G M E N T

C.K. Abdul Rehim, J:

Appellants herein are the respondents in OP No.1498/2015 on the files of Family Court, Ernakulam. The respondent herein is the petitioner before the court below. The case was instituted by the respondent herein seeking a decree declaring that the agreement entered into between the parties to OP 1683/2009 as well as another agreement dated 08-02-2007 executed between the respondent and the 2nd appellant are unenforceable and do not confer on the appellants any right title or interest over any portion of the petition A-schedule property or on the buildings situated therein. Consequential decree of mandatory injunction directing the appellants to vacate the building in the petition A-schedule property was also sought for, along with the some other incidental reliefs.

2. The appellants herein challenged maintainability of OP No.1498/2015 before the Family Court, Ernakulam, by filing I.A. No.3539/2015. Contention was that the scheduled properties are not situated within the territorial area upon which the Family Court, Ernakulam is having jurisdiction and hence the case is not maintainable before that court. The Family Court had dismissed the application through the impugned order, observing that another original petition pending before the Family Court, Muvattupuzha between the parties pertaining to the very same property was transferred to the Family Court Ernakulam by virtue of an order passed by this court in Tr.P.(C) No.4/2014, through judgment dated 23-07-2015. Since the transfer was made for trying the suit along with the present original petition which is filed before the Family Court, Ernakulam, the challenge on the question of jurisdiction cannot be allowed, is the finding.

3. Learned counsel for the appellants had produced a copy of the order of this court in Tr.P.(C) No.4/2014, for

our perusal. It is evident that OP No.554/2013 which was pending before the Family Court, Muvattupuzha, filed by the 1st appellant herein against the respondent, was ordered to be transferred to the Family Court, Ernakulam based on a finding that OP No.592/2013, in which both of them are parties, is pending disposal before the Family Court, Ernakulam. It is contended that merely because OP No.554/2013 was transferred to the Ernakulam Court for a disposal along with OP No.592/2013, that court will not get jurisdiction with respect to the present case, which is instituted seeking declaration with respect to the scheduled properties. Because the scheduled properties are not situated within the territorial jurisdiction of Ernakulam Court, the suit cannot be instituted before that court, is the contention. He had placed reliance on Section 16 of the Code of Civil Procedure and on a Division Bench decision of this court in **Shihabudeen V. Seenath (2013 (1) KHC 738 (DB))**.

4. Learned counsel appearing for the respondent has conceded that, the position regarding territorial jurisdiction is that the property in question is situated within the area upon which the Family Court, Muvattupuzha is conferred with jurisdiction. Under such circumstances, even if the original petition now instituted is to be tried along with the other cases pending before the Family Court at Ernakulam, the respondent can only seek a transfer of the case, after instituting the case before the proper court having jurisdiction.

5. Therefore we are of the opinion that the reason mentioned in the impugned order for rejecting the interim application filed challenging maintainability, is not correct and proper. We hold that OP No.1498/2015 could not be entertained by the Family Court, Ernakulam, since that court is lacking territorial jurisdiction over the subject matter of the case.

6. Under the above mentioned circumstances, the above matrimonial appeal is hereby allowed and the

impugned order passed by the Family Court, Ernakulam in I.A No.3539/2015 in OP No.1498/2013 is hereby quashed. It is held that O.P No.1498/2015 is not maintainable before the Family Court, Ernakulam. The Family Court, Ernakulam is directed to take appropriate steps for return the case for presentation before the proper court, as per procedure contemplated under Rule 10 & 10A of Order VII of the Code of Civil Procedure, 1908.

Sd/-

C.K. ABDUL REHIM, JUDGE.

Sd/-

MARY JOSEPH, JUDGE.**AMG**

True copy

P.A. to Judge