

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

THURSDAY, THE 15TH DAY OF OCTOBER 2015/23RD ASWINA, 1937

Mat.Appeal.No. 999 of 2015 ()

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AGAINST THE ORDER DATED 07-08-2015 IN OP 1409/2014 of
FAMILY COURT, THRISSUR**

APPELLANTS/RESPONDENTS NOS.1,2 & 4:

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- 1. JANAKI AMMA, AGED 75 YEARS,
D/O. MADAVI AMMA, KUNJUPIDUKKAN HOUSE
ANCHAMPEDIKA P.O., KALYASSERY DESOM
KALYASSERY VILLAGE, KANNUR-670 331.**
 - 2. SATHEESAN, AGED 46 YEARS
S/O. JANAKI AMMA, KUNJUPIDUKKAN HOUSE
ANCHAMPEDIKA P.O., KALYASSERY DESOM
KALYASSERY VILLAGE, KANNUR-670 331.**
 - 3. SEEMA
W/O. SATHEESAN, KUNJUPIDUKKAN HOUSE, ANCHAMPEDIKA P.O.
KALYASSERY DESOM, KALYASSERY VILLAGE, KANNUR-670 331.**

**BY ADVS.SRI.C.HARIKUMAR
SRI.VIZZY GEORGE KOKKAT
SRI.RENJITH RAJAPPAN
SMT.SANU S MALAKEEL**

RESPONDENTS/PETITIONER AND RESPONDENTS 3 & 5:

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- 1. RENUKA SADANANDAN, AGED 45 YEARS
D/O. RADHAKRISHNAN, VELLAPALLIYIL
RESIDING AT KRISHNASREE, ANAPPARA, ANNALLUR VILLAGE
MUKUNDAPURAM TALUK, THRISSUR-680 307.**
 - 2. JAYACHANDRAN, AGED 45 YEARS
S/O. JANAKI AMMA, KUNJUPIDUKKAN HOUSE
ANCHAMPEDIKA P.O., KALYASSERY DESOM
KALYASSERY VILLAGE, KANNUR-670 331.**
 - 3. LALITHA
W/O. JAYACHANDRAN, KUNJUPIDUKKAN HOUSE
ANCHAMPEDIKA P.O., KALYASSERY DESOM
KALYASSERY VILLAGE, KANNUR-670 331.**

THIS MATRIMONIAL APPEAL HAVING COME UP FOR ADMISSION ON 15-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

AMG

APPENDIX

PETITIONERS' EXHIBITS

- ANNEXURE-A1- TRUE COPY OF THE LAWYER NOTICE DATED 08-04-2013
ISSUED BY THE 1ST RESPONDENT.
- ANNEXURE-A2- TRUE COPY OF THE LAWYER NOTICE UNDER SECTION 138 OF
THE NEGOTIABLE INSTRUMENTS ACT.
- ANNEXURE-A3- TRUE COPY OF THE PETITION IN OP No.705/2013 OF THE
FAMILY COURT, IRINJALAKUDA DATED 26-09-2013.

RESPONDENTS' EXHIBITS

NIL

True copy

P.A. To Judge

AMG

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

Mat. Appeal No. 999 OF 2015

DATED THIS THE 15th DAY OF OCTOBER, 2015

J U D G M E N T

C.K. Abdul Rehim, J:

The appellants as well as the respondents 2 and 3 herein are the respondents in O.P No.1409/2014 instituted before the Family Court, Thrissur by the 1st respondent herein. The 1st appellant is the mother-in-law of the 1st respondent. The 2nd appellant and the 2nd respondent are her brothers-in-law. The 3rd appellant and the 3rd respondent are the wives of 2nd appellant and 2nd respondent, respectively.

2. Case before the Family Court was filed based on the averments that, the 1st respondent was the owner in possession of 'A'-schedule property situated at Kodungallur, which is having an extent of 18 cents. The property described as 'B'-Schedule is a property purchased by the 1st appellant. Allegation is that, for the purpose of purchasing 'B'-Schedule property, the 1st appellant took loan from a

Bank by mortgaging the 'B'-Schedule property. But she failed to repay the loan. The amounts due in the said loan account was paid by the 1st respondent, by selling 'A'-Schedule property. It is alleged that, there was an agreement that the 'B'-Schedule property will be assigned by the 1st appellant to the 1st respondent. But, instead of doing so the 1st appellant had created documents assigning the 'B'-Schedule property in the name of the 2nd appellant and the 2nd respondent herein, through Document No.483/2006 of SRO Kalyassery. Therefore, case before the Family Court was instituted by seeking a declaration that the petitioner is the absolute owner of the properties described as 'B' and 'C'-Schedules and for a consequential relief of recovery of possession of those properties from appellants 2 & 3.

3. The appellants and the respondents 2 and 3 entered appearance before the Family Court and filed objections refuting all the allegations and inter alia raising a preliminary objection on the question of jurisdiction of the Family Court, contending that in the absence of the

husband of the 1st respondent on the party array, the original petition could not be maintained before the Family Court, because it will not come within the purview of a matrimonial dispute under Section 7 (1) (d) of the Family Courts Act, 1984. It is contended that, even if all the allegations in the suit are sustainable, the relief can be sought for only in a civil court, is the contention.

4. The Family Court considered the question of maintainability as a preliminary issue and passed the order impugned in this appeal, on 07.08.2015, by holding that the dispute will squarely fall within the ambit and scope of explanation (d) of Section 7(1) of the Family Courts Act. It is found that the dispute had arisen out of circumstances related to the marital relationship, and but for the marriage of the 1st respondent with the son of the 1st appellant, there would not have been any occasion for having the transactions mentioned in the original petition. Therefore, it is held that the original petition is maintainable before the Family Court. It is aggrieved by the said order of the Family Court this appeal is filed.

5. Contentions of the appellants in brief is that, the case will not fall within the scope of Explanation (d) to Section 7 (1) of the Family Courts Act. It is argued that for bringing a suit or a proceedings within the ambit of Section 7 (1), it should be a suit or a proceedings between the parties to the marriage or at least the cause of action should be one casting a liability or obligation on a party to a marriage. It is pointed out that the husband of the 1st respondent, who is son of the 1st appellant and the brother of the 2nd appellant and the 2nd respondent, is not a party in the suit. The declaration sought for is with respect to the title over a property which is exclusively belonging to the 1st appellant, who is the mother-in-law of the 1st respondent. There is also an allegation that the suit was instituted by the 1st respondent in collusion with her husband, and it is the husband who had caused a lawyer notice to the 1st appellant demanding for assignment of the property into the name of the 1st respondent. Therefore it is contended that, any claim with respect to a property which is exclusively belonging to the mother-in-law, will not fall within the

category of a suit or a proceedings for an order or injunction “in the circumstances arising out of a marital relationship”. It is specifically contended that such a suit instituted against the mother-in-law and brothers-in-law and their wives, without the husband being impleaded on the party array, cannot in any manner be sustainable as a suit or a proceedings coming within the scope of Explanation (d) to Section 7 (1).

6. Learned counsel for the appellant has placed much reliance on a decision of this court in **Shyni V. George and others (AIR 1997 Ker. 231)**. His Lordship Justice P.K. Balasubramanyan (as he was then) while examining the scope of Section 7 of the Family Courts Act observed that, a suit or a proceeding between the parties to a marriage with respect to property of both the parties or either of them, comes within the purview of the Family Court. When a wife sues her husband for recovery of her property and when in such a suit the wife is obliged to add a close relative of the husband or even a stranger on the allegation that the husband made over the property to that

close relative or stranger, the jurisdiction of the Family Court will not stand ousted to deal with the claim. Mere presence of the stranger or a close relative can only be as agent of the husband or a confidant of the husband holding the property, with respect to which claim is raised. Therefore it is not possible to accept the argument that in such a case the wife is obliged to file a suit before the civil court. A further observation is made to the effect that, in a given case if the property of the wife was entrusted with the father-in-law and if it is merely a suit against the father-in-law, it is clear that the suit could be instituted only in the ordinary civil court. Based on the above observation it is contended that, in the case at hand the suit in question is one seeking declaration of title over a property belonging to the mother-in-law and therefore the suit could be instituted only in a civil court.

7. But we notice that, in the above quoted decision this court was dealing only with the provision contained in Explanation (c) to Section 7 (1) and has not taken any decision specifically with respect to the ambit and scope of

Explanation (d). The passing observations are only in the nature of a general analysis made with respect to the scope of Section 7, in differentiating jurisdiction between the Family Court and civil court, with respect to matters arising out of claim for properties. In view of the subsequent Division Bench decisions explaining the scope of Explanation (d), we do not think that any ratio directly binding on the issue has been declared in **Shyni's case** (cited supra).

8. Learned counsel for the petitioner had cited an unreported decision of a Single Bench of the High Court of Delhi, in order to canvass the proposition that, a suit filed by the daughter-in-law exclusively against her mother-in-law is not maintainable before a Family Court. But on the facts of the said case it is a suit filed by a father-in-law seeking an injunction restraining his daughter-in-law from entering into a house, upon which he claims absolute right. Observations made by the learned Judge of the Delhi High Court is that, the plaintiff in that case is claiming absolute title upon his property and not as a representative or

trustee on behalf of the husband of the defendant. Eventhough the petitioner is raising her claim in her capacity as widow and nominee of the deceased husband, merely because the cause of action referred is related to the matrimonial relationship the suit cannot be included as one in the circumstances arising out of a matrimonial relationship to bring it within the ambit of Explanation (d), the finding

9. The scope and ambit of Section 7 of the Family Courts Act, especially that of Section 7 (1) (c) was the subject matter of discussion in a decision of the hon'ble Supreme Court in **Abdul Jaleel V. Shahida (2003 (2) KLT 403) (SC)**. It was observed that, on a perusal of the statement of objects and reasons it appears that the Family Courts Act inter alia seeks to exclusively provide within the jurisdiction of the Family Courts all the matters relating to property of the spouses or either of them. Section 7 of the Act provides jurisdiction of the Family Courts in respect of suits and proceedings as referred to in the explanations appended thereto. The wording, "dispute relating to

marriage and family affairs and for matters connected therewith" contained in the objects and reasons must be given a broad construction by the courts. The objects and reasons would clearly go to show that the jurisdiction of the Family Courts extends inter alia in relation to properties of spouses or either of them, which would clearly mean that all the property claims of the parties as a spouse, irrespective of whether the claim is made during subsistence of a marriage or otherwise, would fall within its ambit. It is held that, the well settled principle of law is that the jurisdiction of a court created specially for resolution of disputes of certain kinds should be construed liberally. If restricted meaning is ascribed to Explanation (c) appended to Section 7 of the Act, it would frustrate the objects for which the Family Courts were set up, is the observation.

10. While dealing with the subject, in **Leby Issac V Leena M. Ninan (2005 (3) KLT 665)** a learned Judge of this court observed that, the expression 'circumstances' contained in Explanation (d) would means 'the surrounds of an act', as per Law Lexicon (by P. Ramanatha Iyer, Reprint

Edition, 1992). Referring to **Salter V. State (163 Ga.80, 135 S.E. 408, 409)** the word 'circumstances' in relation to a matrimonial relationship was interpreted as 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 the 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 are attendant upon, which closely precede or closely follow, which surround and accompany, which depend upon, or which support or qualify the principal event of a marriage or a marital relationship. Thus it is observed that, clause (d) would takes in 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 the marital life, which resulted in breaking down of the marriage and also those which closely followed as a consequence of all these. It is observed in the said decision that, if the intention of the legislature was to take in only those circumstances which took place during the marital relationship, there was no necessity to use the word 'circumstances'. Therefore inclusion of word 'circumstances' 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.

11. **Leby Issac's case** (supra) was taken note of in a subsequent Division Bench decision of this court in **Suprabha V. Sivaraman (2006 (1) KLT 712)**. It was observed that, meaning of the word 'circumstances' as found in Law Lexicon and Black's Law Dictionary include those particulars which closely precedes, surrounds, accompanies or follows a marital relationship. It is found that in order to attract clause (c) it should be a suit or a 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 to be only a suit or a proceedings for an order or injunction instituted under the circumstances arising out of the matrimonial relationship. Therefore it is evident that in order bring a suit or a proceedings within the ambit and scope of Explanation (d) to Section 7 (1) there is no necessity that the parties to the marriage should be there in the party array.

12. In a later decision of this court in **Vasumathi V. Valsan (2011 (3) KLT 638)** a Division Bench had distinctly considered the scope of both the explanations (c) and (d). It is observed that, Explanations (b) and (d) to (g) do not make specific reference to the parties to the suit or proceedings. They refer only to the nature of the dispute that are brought before court. In that view of the matter, Explanation (d) refers only to the nature of the suit or proceedings and it does not refer to the parties to the litigation. The emphasis under clause (d), as we perceive it, is on the fact that the suit or proceedings must have a stem

from the circumstances arising out of a marital relationship. Any one can be parties to the suit or proceedings. The suit/proceedings will be exclusively cognizable by the Family Court, if the dispute in such suit or proceedings is in circumstances arising out of a marital relationship. The words “for an order or injunction” together cover all reliefs that can be claimed in such suit or proceedings. The non-specification of the nature of the “order or injunction” in clause (d) must convey that the relief claimed in such suit or proceedings can be anything i.e. “any order or injunction”. The expression “for an order or injunction” cannot obviously be read as an “order of injunction”. Therefore there is no specific reference with respect to any decree in Clause (d) and hence the wording “as an order or injunction” must certainly be held to cover all possible reliefs that may be claimed in such suit or proceedings, including any decree.

13. In yet another decision of a Division Bench of this court, in **Syamaladevi V. Saraladevi (2009 (1) KLT 892)** it was observed that, various clauses contained in the explanation (a) to (g) cannot be restricted to disputes

confining to the parties to the marriage, either during subsistence of the marriage or thereafter. Some of the disputes may even arise after either of them dies. Referring to Clause (d) of the explanations it was observed that, it refers to a suit or a proceeding for an order or injunction in the circumstances arising out of the marital relationship. Therefore clause (d) will be attracted if the dispute is arising out of the marital relationship and need not necessarily be between the spouses.

14. In another decision of this court in **Anil Kumar K.B. V. Sheela N.S. and others (2011 (3) KHC 942)** a Division Bench of this court had dealt with the scope of section 7(1) (d). It is a case where the wife stood as a surety for the brother of the husband in a chitty transaction, in which payment was defaulted by the brother and amounts were realised from the wife. The wife instituted the suit for recovery of the amount paid by her, against the brother of the husband in the Family Court. This court held that since the transaction which forms the cause of action arose “in circumstances arising out of a marital

relationship”, it is a dispute coming under Explanation (d) to section 7(1) of the Act . The Bench held that there can be no doubt that plaintiff stood as a surety for the brother of her husband for the amounts due from him to KSFE, only due to the marital relationship between herself and her husband and only because she was staying in her matrimonial home. She happened to stand as a surety only because of the influence or compulsion of her husband.

15. Considering all the above cited precedents, we have already rendered a decision in **Blessy Varghese Edattukaran V. Sonu (2015 (4) KLT 572) = (2015 (5) KHC 458)**. In the said case, children of the deceased mother raised claim against the father seeking declaration of title over the scheduled properties and also for realization of amounts towards marriage expenses. Contention was raised that the suit will not be maintainable before the Family Court with respect to the property, because it will not fall within the ambit and scope of a suit under of Explanation (c) to Section 7 (1). After elaborate consideration of the scope of Explanation (c) and (d) it was

found that, eventhough the suit will not lie under Clause (c), it will perfectly fall within the scope of Clause (d). Therefore it is observed that if the cause of action agitated is based on the rights and obligations of the parties which are arising out of a matrimonial relationship, it will clearly fall within Explanation (d) to Section 7 (1) of the Family Courts Act.

16. We are of the considered opinion that the crucial aspect to be considered while deciding the question as to whether it is a suit or a proceedings instituted seeking an order or injunction in the circumstances arising out of the marital relationship, is the cause of the lis itself and not the parties to the lis. Prime consideration should be as to whether the cause of the lis has got any bearing with the marital relationship. An objective assessment should be made as to whether the cause has got any stem from the circumstances arising out of the marital relationship. In other words, whether the cause should have been existed but for the marital relationship, shall be the basis of the assessment. If the answer is on the positive, definitely the lis can be categorized as one not coming within the scope of

explanation (d). But if the cause of action is emerging out of any circumstances related to the matrimonial relationship and the same could not have existed independently, then the suit can be maintained before the Family Court, and it will fall under Explanation (d) to Section F(1) of the Act.

17. When the facts of the case at hand is analyzed based on the above said parameters, it is evident that the claim of the 1st respondent that she paid money to the 1st appellant by disposing her own property for discharging the bank liability of the mother-in-law, on the basis of a specific understanding that the B-schedule property will be assigned into her name, has got a clear stem arising out of a circumstances connected to a marital relationship. Since the alleged promise was not complied with and since the 1st appellant had assigned the properties to her sons, the 1st respondent is claiming declaration of title over the property contained in B-schedule. The alleged transaction of the 1st respondent selling her own property for discharging her mother-in-law's debt on the basis that the B-schedule will be

assigned to her name, happens only because of the matrimonial relationship of the parties as daughter-in-law and mother-in-law. But for the marriage of the 1st respondent with the son of the 1st appellant, such an alleged transaction would not have taken place. Therefore the cause of action agitated against the mother-in-law had arisen from circumstance connected with the matrimonial relationship . Whether the parties to the marriage are parties to the lis, becomes immaterial in such circumstances. Therefore considering the wider interpretation to be given to the ambit and scope of the explanation contained under clause (d), as guided by binding precedents of this court and the hon'ble Supreme Court, we are persuaded to hold that the cause agitated is emerging from circumstances arising out of marital relationship. It is rightly observed by the Family Court that the alleged contract between the 1st respondent and the 1st appellant is only due to the marriage of the 1st respondent with the son of the 1st appellant. The entire transaction took place after the marriage. Therefore it is found that the

dispute will squarely come within the purview of explanation (d) to section 7(1) of the Act.

18. The Family Court observed that, the question as to whether the transaction is a valid transaction, where there is any bar of limitation, whether the relief claimed under the other enactment can be claimed in the main petition itself etc. are matters which need to be adjudicated while contesting the suit. We perfectly agree with such observations and hold that the original petition instituted before the Family Court is maintainable before that court.

19. In the result, the above appeal deserves no merit and the same is hereby dismissed.

Sd/-

C.K. ABDUL REHIM, JUDGE.

Sd/-

MARY JOSEPH, JUDGE.

AMG/Pmn

True copy

P.A. to Judge