

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

TUESDAY, THE 15TH DAY OF DECEMBER 2015/24TH AGRAHAYANA, 1937

Mat.Appeal.No. 1089 of 2015 ()

AGAINST THE ORDER/JUDGMENT IN OP 1542/2012 of FAMILY COURT,
NEDUMANGAD DATED 16-07-2015

APPELLANT(S)/PETITIONERS:

1. SUNITHA BEEVI
DALAIK MANZIL, IRUTHALAMOOLA, THOLICODE PO
NEDUMANGAD, THIRUVANANTHAPURAM
2. NIYAZ NS AGED 19 YEARS
S/O.SUNITHA BEEVI, DALAIK MANZIL, IRUTHALAMOOLA
THOLICODE PO, NEDUMANGAD, THIRUVANANTHAPURAM
3. NIZHANA NS
D/O.SUNITHA BEEVI, DALAIK MANZIL, IRUTHALAMOOLA
THOLICODE PO, NEDUMANGAD, THIRUVANANTHAPURAM
REPRESENTED BY HER NATURAL GUARDIAN MOTHER THE 1ST
APPELLANT

BY ADV. SRI.G.SUDHEER

RESPONDENT(S)/RESPONDENTS:

1. M.K. NIZAMUDEEN, AGED 48 YEARS
S/O.MUHAMMED KUNJU, DALILA MANZIL, IRITHALA MOOLA
THOLICODE, RESIDING AT VIAYIL VEEDU, PERINGAVIL
THOLICODE, CHITTUVETTUMURI, THALICODE VILLAGE
NEDUMANGAD 695541
2. SHARAFUDEEN
S/O.SHAHID HAMEED, PAUSAL MANZIL, PULIMOODU
CHITTUVETTUMURI, THOLICODE VILLAGE, NEDUMANGAD 695541

Mat.Appeal.No. 1089 of 2015 ()

3. NAUSHAD, AGED 42 YEARS
S/O.MUHAMMED KUNJU, NAJID VILA, PULIMOODU
THOLICODE, NEDUMANGADU TALUK 695541

R2 BY ADV. SRI.K.C.ELDHO
R2 BY ADV. SRI.JIJO THOMAS
R2 BY ADV. SRI.ANEESH JAMES

THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD ON 15-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.K.ABDUL REHIM & MARY JOSEPH, JJ.

MA.No. 1089 of 2015

Dated this the 15th day of December, 2015

JUDGMENT

Abdul Rehim,J.

The above matrimonial appeal is filed challenging the judgment and decree of the Family Court, Nedumangad in OP.No. 1542/2012. The appellants are the petitioners before the court below and the respondents are the respondents therein. The original petition was filed seeking for a declaration that the 1st appellant is the wife of the 1st respondent and appellants 2 and 3 are the children born out of the wedlock between them. Further relief sought for in the original petition was to declare certain sale deeds as null and void and for declaration of absolute title and possession of the appellants over the immovable properties covered by those sale deeds. The court below had decreed the suit in part by declaring that the 1st appellant is the legally wedded wife of the 1st respondent and that appellants 2 and 3 are born out of the said wedlock. But reliefs of declaration

to the extent of nullifying the sale deeds and declaration of title and possession over the property were declined. It is against disallowance of the said reliefs the above appeal is preferred.

2. The appellants herein have filed IA.4446/15 seeking permission to withdraw the above appeal, with liberty reserved to file a fresh original petition seeking appropriate relief to realise the gold ornaments and money due from the 1st respondent. The above said prayer was opposed by learned counsel appearing for the respondents contending that, if such a liberty is granted to the appellants, it will result in enabling the appellants to institute a suit which may not maintainable on principles of *res judicata*, in view of the issue remaining settled in the judgment impugned in this appeal. Per contra, learned counsel for the appellants contended that no relief was claimed in the earlier suit with respect to return of gold ornaments and money and whether there was any entrustment of such articles or money was not an issue agitated or decided in the suit already decided.

3. This court is of the considered opinion that, whether a suit claiming return of gold and money would be maintainable or not, based on issues decided in the judgment impugned in the

present appeal, is not a matter germane for decision by this court in this appeal. Since the appellants have sought permission to withdraw the appeal with liberty to file a fresh suit, this court is of the opinion that the appeal can be dismissed reserving such liberty, subject to maintainability of such a suit before the Family Court.

4. Accordingly the above appeal is hereby dismissed as withdrawn, subject to liberty of the appellants to file a fresh suit as mentioned above. However, it is made clear that maintainability of any such suit will be amenable to challenge before the Family Court where such suit will be instituted.

C.K.ABDUL REHIM, JUDGE

MARY JOSEPH, JUDGE

Pmn/

