

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM
&
THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

MONDAY, THE 3RD DAY OF AUGUST 2015/12TH SRAVANA, 1937

Mat.Appeal.No. 778 of 2013 ()

AGAINST THE ORDER/JUDGMENT IN OP 373/2012 of FAMILY COURT,
KASARAGOD DATED 29-08-2013
APPELLANT(S)/RESPONDENT :

MAHIN T.P AGED 54 YEARS
S/O. A.R.MAMMU HAJI, RESIDING AT PATTILLATH HOUSE
PADANNA VILLAGE, HOSDURG TALUK, KASARAGOD DISTRICT.

BY ADV. SRI.JAWAHAR JOSE

RESPONDENT(S)/PETITIONERS :

1. SUBAIDA M.V, AGED 43 YEARS
W/O. MAHIN T.P., RESIDING AT SHAHID MANZIL
THEKKEPURAM, PADANNA VILLAGE, HOSDURG TALUK
KASARAGOD DISTRICT-671 121.
2. SHAHID , AGED 19 YEARS
S/O. MAHIN T.P., RESIDING AT SHAHID MANZIL
THEKKEPURAM, PADANNA VILLAGE, HOSDURG TALUK
KASARAGOD DISTRICT-671 121.
3. SHABIN , AGED 17 YEARS
S/O. MAHIN T.P., RESIDING AT SHAHID MANZIL
THEKKEPURAM, PADANNA VILLAGE, HOSDURG TALUK
KASARAGOD DISTRICT-671 121.
4. MUHAMMED SHANIL , AGED 9 YEARS
S/O. MAHIN T.P., RESIDING AT SHAHID MANZIL
THEKKEPURAM, PADANNA VILLAGE, HOSDURG TALUK
KASARAGOD DISTRICT-671 121.

5. NAFEESATH SHADIYA , AGED 9 YEARS
D/O. MAHIN T.P., RESIDING AT SHAHID MANZIL
THEKKEPURAM, PADANNA VILLAGE, HOSDURG TALUK
KASARAGOD DISTRICT-671 121.

R1-R5 BY ADV. SRI.K.ABDUL JAWAD
R105 BY ADV. SRI.MATHEW A KUZHALANADAN
R1-R5 BY ADV. SMT.VINEETHA V.KUMAR

THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD ON 03-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.K.ABDUL REHIM & K.RAMAKRISHNAN, JJ.

Mat. Appeal No. 778 of 2013

Dated this the 3rd day of August, 2015

JUDGMENT

K.Ramakrishnan ,J.

Respondent in OP.373/2012 on the file of the Family Court, Kasaragod is the appellant herein. OP was filed by the respondents herein for claiming maintenance to the respondents @ Rs.5000/- and 4000/- and 3000/- respectively and also to recover Rs.1 lakh being the amount paid at the time of marriage and an amount of Rs.2,60,000/- and also Rs.1,62,500/- and also 30 sovereigns of gold ornaments or its value said to have been misappropriated. The allegation was that the marriage between the appellant and the 1st respondent was solemnised on 2.3.1986 and 5 children were born to them in the wedlock. Both of them were living separately due to some misunderstanding . Articles entrusted with the appellant or its value were also not returned. So the respondents herein filed the above OP. Allegation of the appellant is denied by the respondents. She also filed MC.

No.90/2012 claiming future maintenance. That was also tried along with the OP which was disposed of a common judgment allowing past maintenance @ Rs. 2500/- per month to the 1st petitioner and at the rate of Rs.1500/- each per month to petitioners 3 to 5 from June 2011 till the date of filing of the petition and also directed to pay monetary claims as well as gold ornaments and directed to pay Rs.2,60,000/- and Rs.1,62,500/- claimed by the petitioners towards value of the share of the 1st petitioner. Maintenance application was also allowed granting future maintenance at the same rate.

2. The above appeal was filed by the appellant against the said order. MA.No.58/2014 was filed by the respondents herein challenging rejection of the claim and also claiming quantum of maintenance. During pendency of the appeal the matter has been settled between the parties and the 1st respondent and the appellant were decided to live together and certain arrangements were made regarding the property dispute between them and sale documents were executed. So they filed IA.No.2664/2015 for recording joint compromise entered into between the parties and it is as per the joint compromise MA.

No.58/2014 was dismissed as withdrawn and RP (FC) was also settled and the petition for maintenance filed by the wife was permitted to be withdrawn and accordingly RP(FC) was disposed of by this court by another bench. Considering the fact that the matter has been settled between the parties and they started residing together, this court feels that the decree passed by the court can be set aside and the appeal can be disposed of in terms of the compromise entered into between the parties . Since the parties have decided to settle the dispute and are living together, the order passed by the court below is set aside and the appeal is disposed of accepting the terms of the compromise entered into between the parties in IA.2664/2015. Though there is no endorsement in the IA that the compromise is for the benefit of the minors and also no separate application has been filed, we feel from the circumstances that the entire compromise has been entered into between the parties in order to safeguard the interest of the minors and provision has been made to the effect that the appellant will pay maintenance @ Rs.7500/- to the 1st respondent as maintenance in order to avoid further litigation if there is subsequent event happens during the time of living

together. Therefore IA.No.2664/2015 is allowed and the compromise is recorded and the appeal is allowed and the decree and judgment passed by the court below in OP.No.373/2012 is set aside and the appeal is disposed of in terms of the joint compromise . The joint compromise petition filed by the parties will form part of this judgment.

C.K.ABDUL REHIM, JUDGE

K.RAMAKRISHNAN, JUDGE

Pmn/

