

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR. JUSTICE ANIL K.NARENDHAN

WEDNESDAY, THE 18TH DAY OF NOVEMBER 2015/27TH KARTHIKA, 1937

Mat.Appeal.No. 312 of 2014 ()

**AGAINST THE ORDER IN OP 417/2011 of FAMILY COURT, MALAPPURAM
DATED 13-01-2014**

APPELLANT(S)/NAME AND ADDRESS OF THE APPELLANTS/PETITIONERS:

1. PARAMMAL ITHEEMA, AGED 52 YEARS
D/O. MOIDEENKUTTY, OTTAVANKUNDU, THOTTEKKADU POST
AMARAMBALAM AMSOM, NILAMBUR, MALAPPURAM DISTRICT
PIN-679332.

2. MARIYAM, AGED 33 YEARS,
D/O. PARAMMAL ITHEEMA, OTTAVANKUNDU, THOTTEKKADU POST,
AMARAMBALAM AMSOM, NILAMBUR, MALAPPURAM DISTRICT
PIN-679332.

3. ASIYA AGED 33 YEARS,
D/O. PARAMMAL ITHEEMA, OTTAVANKUNDU, THOTTEKKADU POST
AMARAMBALAM AMSOM, NILAMBUR, MALAPPURAM DISTRICT
PIN-679332.

BY ADVS.SRI.K.A.SHAMSUDEEN
SRI.K.J.MOHAMMED ANZAR
SRI.A.D.SURESH BABU

RESPONDENT(S)/NAME AND ADDRESS OF THE RESPONDENT/RESPONDENT:

V.M.SEETHIKKOYA THANGAL @ CHERI, AGED 55 YEARS
S/O. LATE POOKKOYA THANGAL,
VELLAKKATTU MUKHAMINGAL HOUSE, PALLIMUKKU
PANNIPPARA POST, PEERAKAMANNA VILLAGE, ERNAD TALUK
MALAPPURAM DISTRICT, PIN-6786541.

R. BY ADV. SRI.A.A.ZIYAD RAHMAN
BY ADV. SRI.LAL K.JOSEPH
BY ADV. SRI.P.M.ZAFARULLAH
BY ADV. SRI.V.S.SHIRAZ BAVA
BY ADV. SRI.JOSEPH KURIAN VALLAMATTAM

THIS MATRIMONIAL APPEAL HAVING COME UP FOR ADMISSION ON 18-
11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**P.R. RAMACHANDRA MENON
&
ANIL K. NARENDRAN, JJ.**

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Mat Appeal No. 312 of 2014

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Dated, this the 18th day of November, 2015

JUDGMENT

Anil K. Narendran, J.

The appellants are the petitioners in O.P. No. 417 of 2011 filed under Section 7 of the Family Court Act 1984 before the Family Court, Malappuram, seeking an order declaring that the respondent herein is the biological father of the second and third appellants.

2. The Family Court by order dated 13.01.2014 dismissed the aforesaid application as not maintainable. It is aggrieved by the said order of the Family Court, the appellants have preferred this appeal.

3. We heard the learned counsel for the appellants and also the learned counsel appearing for the respondent.

4. A reading of the impugned order passed by the Family Court would show that the maintainability of the original petition filed by the appellants was decided with reference to the judgment of this Court in **Bharat Kumar Vs. Selma Mini [2007 (1) KLT 945]**. In the decision cited supra, this Court held that the Family Court cannot

entertain any proceedings for declaration as to the legitimacy of any person without any claim on marital relationship. Paragraph 4 of the said decision reads as follows :

"4. The jurisdiction conferred on the Family Court is settlement of issues arising out of matrimonial causes. Matrimonial cause is a cause relating to rights of marriage between husband and wife. Paternity and legitimacy are two different concepts. Paternity by itself may not, in all circumstances, be a matrimonial cause, as in the instant case. Paternity is the state or fact of being the father of a particular child. Legitimacy of a child is its right to be officially accepted as such. Admittedly the petitioner is not the husband of the first respondent. According to the 1st respondent, she had only extra marital relationship with the petitioner. The second respondent herein is the husband. He did not have a case regarding legitimacy of the child. The Family Court gets jurisdiction to go into the question of legitimacy of any person only if such a question arises in a matrimonial cause. An investigation on the paternity of a person is required only when the question of legitimacy of the person is to be decided by the Family Court. That question arises only out of a matrimonial cause where there is a claim on matrimonial relationship out of

which the said person is born. It may also arise in situations covered by explanation (g) to S.7(1), in the case of guardianship, as held by the Supreme Court in *Renubala Moharana v. Mina Mohanty* (2004 (2) KLT SN 38 (C.No. 42) SC = (2004) 4 SCC 215). It was also held by the Supreme Court in the said decision that the Family Court cannot entertain any proceedings for declaration as to the legitimacy of any person without any claim on marital relationship. In the case before us the petitioner before the Family Court, the first respondent herein, does not have a case of marital relationship with the petitioner herein. The case admittedly is of extra marital relationship. The dispute is with regard to the paternity of a child born in the said extra marital relationship. That is not a matter falling within the jurisdiction of the Family Court. Paternity of a child can be gone into as incidental to a dispute on the legitimacy arising only out of a claim on marital relationship between the parties. Such a question also may incidentally arise in deciding a guardianship petition. No such situation arises in this case."

5. In view of the principle laid down in the aforesaid judgment of this Court, the reasoning of the Family Court that O.P. No. 417 of 2011 filed by the appellants is not maintainable before

that Court under Section 7 of the Family Court Act is perfectly legal, warranting no interference in this appeal.

6. Another reason stated by the Family Court in the impugned order for not entertaining O.P. No. 417 of 2011 is the award passed by the Lok Adalath in P.L.P. No.1/2009 filed before the Nilambur Taluk Legal Services Authority. It was a petition filed by the 1st appellant in the year 2009 before the Nilambur Taluk Legal Services Committee seeking the very same relief. That petition was compromised between the first appellant and the respondent herein. The first appellant has also filed a statement to the effect that she had no sexual intercourse with the respondent herein and that she has not become pregnant by him. As rightly pointed out by the learned counsel for the appellants, the said petition was one preferred by the first appellant, in which the second and third appellants were not parties. In that view of the matter, the award passed by the Lok Adalath in P.L.P. No. 1/2009 will not stand in the way of appellants 2 and 3 approaching the competent Civil Court for a declaration that the respondent is their biological father.

7. Another reason given by the Family Court in the impugned order for not entertaining O.P. No. 417 of 2011 is the genuinity of

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the certificate produced by the first appellant, namely the birth certificate in which the date of birth of the third appellant is shown as 29.11.1976; whereas, the date of marriage is shown as 16.09.1977 in the marriage certificate of the first appellant and the respondent. The genuinity of the aforesaid documents has to be decided in the proceedings to be initiated by appellants 2 and 3 before appropriate Court seeking a declaration that the respondent is their biological father.

In the result, this appeal is dismissed subject to the observations made as above. The dismissal of this appeal will not stand in the way of appellants 2 and 3 approaching the competent Court seeking a declaration that the respondent is their biological father.

Sd/-

**P. R. RAMACHANDRA MENON,
JUDGE**

Sd/-

**ANIL K. NARENDRAN,
JUDGE**

kmd

/True copy/

P.A. to Judge