

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE V.K.MOHANAN

&

THE HONOURABLE MR. JUSTICE P.D.RAJAN

THURSDAY, THE 8TH DAY OF JANUARY 2015/18TH POUSHA, 1936

Mat.Appeal.No. 862 of 2014

[AGAINST THE ORDER IN IA NO.674/2013 IN OP 671/2013 of FAMILY COURT,
ATTINGAL DATED 04-04-2014]

APPELLANT(S)/CLAIM PETITIONER:

BENAZIR, AGED 34 YEARS,
D/O.REGILA BEVI, RESIDING AT BENZI NIVAS
THONNAKKAL P.O, VEILOR VILLAGE
THIRUVANANTHAPURAM TALUK & DISTRICT

BY ADV. SRI.V.VENUGOPALAN NAIR

RESPONDENTS(S)/PETITIONER AND RESPONDENT:

1. RAHEESA BEEGUM, AGED 51 YEARS,
RESIDING AT PATANVILAKOM VEEDU
KAPPIL CHERRY, EDAVA VILLAGE,
CHIRAYINKEEZH TALUK, FROM PURNAMI VEEDU
THEKKUMBHAGOM CHERRY, PARAVOOR VILLAGE
KOLLAM DISTRICT (ORIGINAL PLAINTIFF).

2. THAHA, AGED 56 YEARS
PURNAMI VEEDU (VADAKKUNAZHIKAM VEEDU) THEKKUMBHAGOM CHERRY
PARAVOOR VILLAGE, KOLLAM DISTRICT PIN.691301

R2 BY ADV. SRI.K.SUBASH CHANDRA BOSE

R1 BY ADV. SRI.P.PUSHPARAJAN

R1 BY ADV. SRI.S.RAVINDRAN NAIR

THIS MATRIMONIAL APPEAL HAVING COME UP FOR ADMISSION ON
08-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

V.K.MOHANAN & P.D.RAJAN, JJ.

Mat. Appeal No. 862 of 2014

Dated this the 8th day of January, 2015

J U D G M E N T

P.D.RAJAN,J:

The appellant is the claim petitioner in I.A.No.674 of 2013 in O.P.No.671 of 2013 of the Family Court, Attingal. The above original petition was filed by the wife/the first respondent for recovery of money and gold ornaments from her husband, who is the second respondent in this appeal. The above claim petition was filed by the appellant to vacate the order of attachment against the petition scheduled property.

2. The appellant herein contended that she is the absolute owner of the scheduled property by virtue of sale deed No.3067/2011/11 of SRO, Chathanoor and she purchased the property from the second respondent for valuable consideration and the first respondent mistakenly got attached the property, subsequent to the

purchase of the above property. According to the appellant, she had effected mutation and is paying land tax.

3. The first respondent herein contended that the purchaser is the niece of her husband and it is a fraudulent transaction to defeat her claim for maintenance after collusion.

4. The lower court examined the claim petition and marked Exts.A1 and A2 and came to a conclusion that Ext.A1 is a sham document and consequently, the claim petition was dismissed. Hence, this appeal.

5. The learned counsel for the appellant contended that if the attachment is not lifted, it will cause irreparable injury. She purchased the property two years prior to the initiation of the litigation and she is a bona fide purchaser. There is no collusion between the purchaser and the second respondent and the wife has no objection with regard to the purchase of the property and nothing was brought out in the lower court to show that there was collusion between the purchaser

and the seller.

6. The learned counsel appearing for the first respondent contended that she is entitled to get maintenance from her husband, who transferred property after colluding with the appellant. The second respondent supported the claim of the appellant.

7. We heard the counsel for the appellant as well as the respondents.

8. When the wife has a right to receive maintenance from her husband, from the profits of immovable property and such property is transferred, the right may be enforced against the transferee, if he has notice about it or if the transfer is gratuitous. But, if the transfer is for consideration and without notice of right, no such proceedings is possible against such property.

9. The first respondent/wife contended that M.C.No.132 of 2011 is pending before the Judicial First Class Magistrate Court, Paravoor and claim for maintenance is pending. The facts show that

the husband and wife were residing in the petition schedule property just prior to the filing of the above case

10. Even prior to Ext.A1, the first respondent had approached the Magistrate Court, Paravoor for relief under the provisions of the Protection of Women from Domestic Violence Act. It is true that the first respondent has a right of maintenance from her husband. Whether the execution of Ext.A1 has a direct nexus with the matrimonial dispute between the wife and husband, is to be probed into by the learned Judge. On a close scrutiny of the judgment, it is clear that no evidence has been adduced by the appellant in the family court except Exts.A1 and A2 to reach such conclusion. Therefore, the claim made by the petitioner and the right of the first respondent is to be adjudicated properly by adducing evidence. The Family court disposed of the claim petition and the right of the first respondent without conducting any enquiry and therefore, reconsideration is necessary.

In the result, the order passed in I.A.No.674/2013 is set aside and the matter is remitted to the Family Court for fresh consideration, according to law. Both parties are directed to adduce evidence, if any, with regard to their respective contentions and the above interlocutory application shall be disposed of within three months from the date of receipt of a copy of this judgment.

This Mat.Appeal is disposed of as above.

V.K.MOHANAN,
Judge

P.D.RAJAN,
Judge.

MBS/

Mat.Appeal No. 862 of 2014

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