

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

TUESDAY, THE 10TH DAY OF FEBRUARY 2015/21ST MAGHA, 1936

OP(C).No. 2700 of 2014 (O)

(I.A.2922/2014 IN OS.NO. 36/2014 OF MUNSIFF COURT, TIRUR)

PETITIONER :

VIJITHA.V. KUMAR,
W/O.SANTHOSH KALAPPURAYIL, ALATHIYUR AMSOM DESOM,
TIRUR TALUK, MALAPPURAM DISTRICT.

BY ADV. SRI.JAMSHEED HAFIZ

RESPONDENT(S):

- 1. KALAPPURAYIL SANTHI,
D/O.RADHA.

2. SANTHOSH KALAPPURAYIL,
S/O.RADHA

BOTH THE RESPONDENTS ARE RESIDING AT KALAPPRUAYIL HOUSE,
ALATHIYUR AMSOM DESOM,
TIRUR MALAPPURAM DISTRICT - 676 102.

R1 BY ADVS. SRI.HARISH R. MENON
SRI.K.T.SHYAMKUMAR
R2 BY ADV. SMT.K.N.SANDHYA

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD
ON 10-02-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

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OP(C).No. 2700 of 2014 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1: A TRUE COPY OF THE PLAINT IN O.S. 36/2014 BEFORE THE MUNSIFF COURT, TIRUR DATED 21/01/2014.
- EXHIBIT P2: A TRUE COPY OF THE WRITTEN STATEMENT FILED BY THE PETITIONER HEREIN DATED 14/03/2014 IN O.S. 36/2014 BEFORE THE MUNSIFF COURT, TIRUR.
- EXHIBIT P3: A TRUE COPY OF THE ADDITIONAL WRITTEN STATEMENT DATED 10/11/2014.
- EXHIBIT P4: A TRUE COPY OF THE PETITION IN O.P.183/2014 BEFORE THE FAMILY COURT, TIRUR DATED 12/03/2014.
- EXHIBIT P5: A TRUE COPY OF THE PETITION IN O.P. 388/2014 BEFORE THE FAMILY COURT, TIRUR DATED 06/06/2014.
- EXHIBIT P6: A TRUE COPY OF THE O.P.(HMA) 197/2014 BEFORE THE FAMILY COURT, TIRUR DATED 14/03/2014.
- EXHIBIT P7: A TRUE COPY OF THE I.A.2922/2014 IN O.S.36/2014 BEFORE THE MUNSIFF COURT, TIRUR DATED 06/11/2014.
- EXHIBIT P8: A TRUE COPY OF THE COUNTER TO THE I.A. 2922/2014 IN O.S.36/2014 BEFORE THE MUNSIFF COURT,TIRUR DATED 06/11/2014.
- EXHIBIT P9: A TRUE COPY OF THE ORDER DATED 11/11/2014 IN I.A.2922/2014 IN O.S.36/2014 BEFORE THE MUNSIFF COURT, TIRUR DATED 06/11/2014.

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

P.A.TO.JUDGE

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P.BHAVADASAN, J.

O.P.(C) No. 2700 of 2014

Dated this the 10th day of February, 2015

J U D G M E N T

Aggrieved by the order dated 11.11.2014 in I.A.No.2922/2014 in O.S.No. 36/2014, the petitioner who is the 2nd defendant in the suit has come up with this original petition under Article 227 of the Constitution of India.

2. The petitioner is the wife of the 2nd respondent. The first respondent is the sister-in-law. It is not much in dispute that the couple was residing with the first respondent. The mother of the first and the second respondents settled the property which belonged to her in favour of the first respondent and thereafter, the first respondent became the absolute owner of the property. Things went well for some time. Later, the relationship between the couple fell apart and that gave rise to various petitions by the wife against the husband.

3. While things stood so, the first respondent herein instituted O.S.No. 36/2014 for a mandatory injunction directing the couple to vacate the premises. In the meanwhile, the petitioner before this Court had instituted proceedings before the Judicial First Class Magistrate for offence under Section 498A and also taken recourse to the proceedings under Protection of women from Domestic Violence Act. She was able to procure an order of residence under the Domestic Violence Act.

4. At the time of hearing, this Court is given to understand that the residence order so obtained was though vacated by the Judicial First Class Magistrate Court at the instance of the first respondent herein, this Court set aside the order and directed the Judicial First Class Magistrate Court to dispose of the matter as expeditiously as possible.

5. When O.S.No. 36/2014 was included in the list, the petitioner herein moved I.A.No.2922/2014 praying for adjourning the suit to a future date on the ground that the

assignment deed or the settlement deed as the case may be, in favour of the first respondent by the mother-in-law of the petitioner has been assailed before the Family Court and the matter is pending. It was contended that since the decision in that may have a bearing on the present suit, O.S.No.36/2014 may not be proceeded with.

6. The plaintiff in the suit resisted the petition and the court below after elaborately considering various aspects held that there is nothing which prevented the court from going on with the suit and dismissed the petition.

7. Sri. Jamsheed Hafiz, the learned counsel appearing for the petitioner contended that the court below was not justified in dismissing the petition and the court below ought to have seen that the proceedings before the Family Court in which settlement deed or the document in favour of the first respondent by the mother-in-law of the petitioner was in issue. It could not be disputed, according to the learned counsel, that decision in that suit may have a bearing on the

issue involved in the present suit. Moreover, it was contended that the petitioner had been able to obtain an order under the Domestic Violence Act, i.e. an order of residence and as long as that order is in force, she could not be evicted from the house. Accordingly, it is contended that the court below ought to have allowed I.A.No. 2922/2014.

8. The learned counsel appearing for the contesting respondents on the other hand contended that this is nothing but a collusive suit between the couple to deprive the right of the first respondent before this Court and to deny her rights over the suit property. The learned counsel went on to contend that merely because, the couple have stayed in the house does not qualify the house to be a matrimonial house, nor is there a domestic relationship as understood in Domestic Violence Act.

9. Even assuming that the petitioner before this Court has obtained an order under the Domestic Violence Act, its enforceability is the matter to be agitated before the

Judicial First Class Magistrate court concerned and that cannot preclude the suit being proceeded with by the Munsiff Court.

10. The learned counsel also pointed out that the contention that the suit ought to have been tried only by the Family Court is not agitated before the court below nor does it find a place in the pleadings and therefore that does not call for any consideration at all.

11. After having heard the learned counsel for the petitioner and the learned counsel for the respondents, it is found that there is little merit in this original petition. As things now stand, the first respondent is the owner of the property and the mere fact that the couple might have lived along with the first respondent cannot prevent her from seeking eviction. As rightly pointed out by the learned counsel for the respondents, the impact of the order under the Domestic Violence Act obtained by the petitioner is a different matter altogether to be agitated in a different

forum at appropriate stage of the proceedings. Whether that can have any impact on the title or the right of the first respondent to seek eviction, is a matter which needs to be adjudicated.

12. Equally without force is the contention that proceedings before the Family Court will have a bearing on the issues involved in the present suit. It is not contended that the present suit ought to be tried by the Family Court and in the petitions filed before the court below though no such contention is seen taken before this Court in this petition. On the pleadings, it is crystal clear that suit cannot fall within the ambit of Section 7 of the Family Courts Act.

13. The consequence of the decision in the Family Court etc. are matters to be considered at a later stage. Nothing prevents the present suit being proceeded with as the rights claimed are independent and distinct. One needs to remember that the property never ever belonged to the second respondent. The only case is that the couple

happened to stay with the first respondent. If that by itself is sufficient to confer right of the petitioner, is a different matter but that need not prevent the suit from being proceeded with. The court below was therefore perfectly justified in dismissing the petition.

This original petition is without merits and it is accordingly dismissed.

Sd/-
P.BHAVADASAN
JUDGE

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//True copy//

P.A. to Judge