

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE V.K.MOHANAN

&

THE HONOURABLE MR. JUSTICE P.D.RAJAN

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

OP (FC).No. 43 of 2015 (R)

OP 434/2008 PENDING BEFORE FAMILY COURT,TRIVANDRUM

PETITIONER(S)/PETITIONER:

VISWAMBHARAN.D AGED 55 YEARS
S/O DEVADAS, RESIDING AT KUNNUVILA VEEDU, MANAKKALLU
KANNARAVILA, NELLIMOODU P.O., KOTTUKAL VILLAGE
THIRUVANANTHAPURAM

BY ADV. SRI.K.RAJESH KANNAN

RESPONDENT(S)/RESPONDENT:

SHEELA.A.A
D/O. AMBUJAKSHI, SURESH MANDIRAM, PAYATTUVILAM
KOTTUKAL, THIRUVANANTHAPURAM 695 583

THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION ON
10-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

OP (FC).No. 43 of 2015 (R)

APPENDIX

PETITIONER(S) ' EXHIBITS

EXHIBIT P1: TRUE COPY OF THE I.A. IN O.P.NO.83/09, OPNO.359/09 AND
O.P.NO.581/09 ON THE FILE OF THE LOK ADALATH,
THIRUVANANTHAPURAM DATED 29.8.2014

RESPONDENT(S) ' EXHIBITS

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NIL.

TRUE COPY

PA TO JUDGE.

acd

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

.....
O.P(FC) No. 43 of 2015

.....
Dated 10th February, 2015

JUDGMENT

V.K.MOHANAN, J

The petitioner herein is the husband of the respondent and as the relationship among them got strained, they were residing separately and thus the petitioner herein, approached the Family Court, Thiruvananthapuram by filing O.P.No.434 of 2008 for restitution of conjugal rights. The respondent wife filed O.P.No.83 of 2009 before the same court for claiming maintenance and for recovery of gold ornaments and money. Petitioner has also filed O.P.No.582 of 2009 in the said court for declaration of guardianship and for custody of the minor children and beside the above, he has also filed O.P.No.359 of 2009 for divorce. During the pendency of the above cases, the same were sent to Lok Adalath for settlement and thus the case came up for Lok Adalath at Thiruvananthapuram on 18.9.2008 and an amicable settlement was arrived at between the parties according to the petitioner.

2. Now the case of the petitioner is that as per settlement arrived, both parties have agreed to dissolve the marriage by filing a mutual divorce petition under Section 13(B) of Hindu Marriage Act and that the petitioner will convey 2.025 ares of property belonging to him lying in re-survey No.46 of 2010(old survey No.143/5C) to the minor children reserving life interest for the petitioner and relinquishing his one half right in 18.23 ares in survey No.129/4 and 143/5 in Kottukal Village within a period of one year to the first respondent, wife. Beside the above, regarding the visitorial right of the petitioner, it was agreed that the petitioner can visit the children from 10.30 am to 5 pm on first Saturday and every Monday and he is allowed to deposit them in the school in which children are studying to enquire about their studies. On the basis of the above terms, according to the petitioner a settlement was prepared and signed by the parties.

3. It is the further case of the petitioner that when the award was passed, it is seen incorporated in paragraph 2

of the order that the petitioner transferred his right in 2.025 ares of property in re-survey No.46 of 2010 (old survey No.143/5C) in Kottukal Village in favour of the respondent wife and relinquished his one half right in 18.23 ares of property in old survey No.129/4 and 143/5C in Kottukal Village within a period of one month after discharging the loan liability in the property. According to the petitioner, the said term was not agreed by the petitioner. But the said mistake came to his knowledge only when the respondent filed execution petition, viz E.P.No.51 of 2013 pending before the Family Court, Thiruvananthapuram.

4. Thus according to the petitioner, he filed a review petition to get corrected the said mistake but the Lok Adalath dismissed the same holding that they have no power to review. Thereafter, the petitioner preferred Ext.P1 petition dated 29.8.2014 under Section 152 of Code of Civil Procedure with a prayer to correct the mistake in the order of the Lok Adalath dated 18.09.2009 as "executing necessary documents in favour of the 2nd

and 3rd petitioners (children) Shivin.D.Viswam and 2) Shivith.D.Viswam)". The grievance now projected by the petitioner is that though Ext.P1 was filed as early as on 29.8.2014, no orders are passed and at the very same time, the Family court is proceeding with the execution petition. Under the above circumstances, it is prayed that an order may be issued directing the Family Court, Thiruvananthapuram to keep the execution proceedings in E.P.No.51 of 2013 in abeyance till an order is passed on Ext.P1 IA, which is not numbered, for correction, pending before the Lok Adalath, Thiruvananthapuram and also prayed to issue a direction to the Lok Adalath, Thiruvananthapuram to dispose of Ext.P1 petition.

5. Heard the learned counsel for the petitioner. Considering the nature of the order, which we propose to issue, notice to the respondent is dispensed with.

6. The specific case put forward by the petitioner is that in the award passed by the Lok Adalath, Thiruvananthapuram on the basis of the settlement arrived between the parties to the lis, contains a clause

which was not agreed by the petitioner. If the said facts are correct, and the award contain a clause, which is not actually consented and agreed by the petitioner, it is absolutely necessary to pass appropriate orders correcting the mistake after an enquiry in that regard. However, though the petitioner has approached the Adalath by filing Ext.P1, the same is pending without consideration but the Family Court, Thiruvananthapuram is proceeding with the execution proceedings in E.P.No.51 of 2013. If that be so, unless the proceedings in E.P.No.51 of 2013 is stayed, Ext.P1 IA pending before the Lok Adalath, Thiruvananthapuram will become infructuous. So, according to us, it is only just and proper to direct Lok Adalath, Thiruvananthapuram to take up Ext.P1 petition, if the same is in order and to pass appropriate orders thereon and till then, Family Court Thiruvananthapuram be directed to defer the proceedings in E.P.No.51 of 2013.

In the result, this OP is disposed of directing the Lok Adalath, Thiruvananthapuram to take up Ext.P1 petition

in O.P.Nos. 359/2009, 581 of 2009 and 83 2009, if the same is in order and pass appropriate orders therein at any rate within 45 days from the date of production of a copy of this judgment before the Lok Adalath, Thiruvananthapuram and the Family Court, Thiruvananthapuram is directed to defer all the proceedings in E.P.NO.51 of 2013 for a period of two months from the date of production of a certified copy of this judgment before Family Court, Thiruvananthapuram.

Original petition is disposed of accordingly.

V.K.MOHANAN, JUDGE

P.D.RAJAN, JUDGE

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