

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM
&
THE HONOURABLE MRS. JUSTICE MARY JOSEPH**

WEDNESDAY, THE 7TH DAY OF OCTOBER 2015/15TH ASWINA, 1937

O.P (F.C).No. 114 of 2015 (R)

O.P.No.155/2013 OF FAMILY COURT, CHAVARA

PETITIONER(S)/RESPONDENTS :

- 1. SUBHASH KUMAR,
S/O. RAMAN PILLAI, PLAKKATTETHU VEEDU,
PAVUMBA SOUTH, PAVUMBA VILLAGE, KARUNAGAPPALLY. (DIED)**
- 2. SURESH KUMAR, AGED 40 YEARS,
S/O. RAMAN PILLAI, PLAKKATTETHU VEEDU, PAVUMBA SOUTH,
PAVUMBA VILLAGE, KARUNAGAPPALLY.**

**BY ADVS. SMT. MINI GANGADHARAN
SRI. N.C.SAJUNAM**

RESPONDENT/PETITIONER :

**CHINNU B.KRISHNAN, AGED 28 YEARS,
D/O. LALITHA, KALEEKKAVADAKKATHIL, PAVUMBA SOUTH,
PAVUMBA VILLAGE, KARUNAGAPPALLY - 690 574.**

BY ADV. SRI. AJAYA KUMAR. G

**THIS OP (FAMILY COURT) HAVING BEEN FINALLY HEARD ON 07-10-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT. P-1: THE TRUE COPY OF THE O.P. No.155/2013.
- EXT. P-2: THE COPY OF THE ATTACHMENT SCHEDULE.
- EXT. P-3: THE TRUE COPY OF PETITION, C-23971/2014 BEFORE THE SDM.
- EXT. P-4: THE TRUE COPY OF PETITION IN MC No.164/2010 OF THE JFMC.
- EXT. P-5: THE TRUE COPY OF OBJECTION FILED BY THE RESPONDENTS IN M.C. 164/2010.
- EXT. P-6: THE TRUE COPY OF INTERIM ORDER IN CMP 11756/2010 IN M.C 164/2010.
- EXT. P-7: THE TRUE PHOTOCOPY OF SUICIDE NOTES - 2 PAGES.
- EXT. P-8: THE TRUE PHOTOCOPY OF FIR NO.631/2014 OF KARUNAGAPPALLY P.S
- EXT. P-9: THE TRUE PHOTOCOPY OF CLUB REPORT DATED 26.02.2014.
- EXT. P-10: THE TRUE PHOTOCOPY OF O.P. NO.269/2014 OF THE FAMILY COURT, CHAVARA.
- EXT. P-11: THE TRUE PHOTOCOPY OF I.A. NO. 185/2015 IN O.P. NO.155/2013
- EXT. P-12: THE TRUE PHOTOCOPY OF OBJECTION FILED BY THE RESPONDENT AGAINST I.A. NO.185/2015 IN O.P. NO.155/2013.
- EXT. P-13: THE TRUE PHOTOCOPY OF REPLY AFFIDAVIT.
- EXT. P-14: THE TRUE PHOTOCOPY OF PETITION FILED BY THE PETITIONER'S FATHER BEFORE THE SUB INSPECTOR OF POLICE, KARUNAGAPPALLY POLICE STATION.
- EXT. P-15: TRUE PHOTOCOPY OF RECEIPT OBTAINED FROM POLICE.
- EXT. P-16: THE COPY OF I.A. NO.76/2015 IN O.P. NO.159/2013 FILED BY THE DECEASED R1'S FATHER SEEKING TO GRAND OF THE INTERIM CUSTODY OF THE MINOR SON OF THE DECEASED R1 TO PERFORM HIS AFTER DEATH RITUALS.
- EXT. P-17: TRUE PHOTOSTAT COPY OF ORDER IN DISMISSING I.A. NO.76/2015 IN O.P. NO.159/2013.

- EXT. P-18: TRUE PHOTOSTAT COPY OF WOUND CERTIFICATE FOR THE PETITIONER'S MOTHER / MOTHER'S ELDER SISTER SMT. SARASWATHY AMMA.
- EXT. P-19: TRUE PHOTOSTAT COPY OF THE REFERRAL LETTER ISSUED BY THE COUNSELOR, GENDER BASED VIOLENCE MANAGEMENT CENTRE, GOVERNMENT TALUK HEAD QUARTERS HOSPITAL.
- EXT. P-20: TRUE PHOTOSTAT COPY OF I.A. NO.196/2015 FILED BY THE PETITIONER'S FATHER SEEKING TO INCORPORATE THE AFFIDAVIT IN SUPPORT OF THE PETITION AS PART OF THE PROCEEDINGS ON RECORD.
- EXT. P-21: THE TRUE COPY OF THE MEMO STATING THAT THE RESPONDENTS WANT TO FILE COUNTER CLAIM IN O.P. NO.155/2013.
- EXT. P-22: TRUE PHOTOSTAT COPY OF ORDER DISMISSING I.A. NO.185/2015 IN O.P. NO. 155/2013.
- EXT. P-23: TRUE PHOTOSTAT COPY OF THE 1ST PAGE OF THE SSLC BOOK FOR THE DECEASED ORIGINAL 1ST RESPONDENT.

RESPONDENT(S)' EXHIBITS - NIL

//TRUE COPY//

P.A. TO JUDGE

**C.K. ABDUL REHIM, J.
&
MARY JOSEPH, J.**

O.P (FC). No. 114 of 2015

Dated this the 7th day of October, 2015

JUDGMENT

C.K. ABDUL REHIM, J.

The 1st petitioner in this case is a dead person. The 2nd petitioner, who is the 2nd respondent in O.P.No.155/2013 on the files of the Family Court, Chavara, is approaching this court by invoking jurisdiction vested under Article 227 of the Constitution for challenging Ext.P22 order passed by that court.

2. O.P.No.155/2013 was instituted by the respondent herein before the Family Court seeking realisation of a sum of ₹5,00,000/- along with interest, gold ornaments valued at ₹11,59,680/-, and for return of the scheduled movable articles or its value of the tune of ₹39,500/-. The husband of the respondent, who is cited as the deceased 1st petitioner

herein as well as the 2nd petitioner, who is the brother of the deceased husband, were respondents in the original petition. During pendency of the case before the Family Court the husband of the respondent. The parents of the respondents have approached the Family Court in I.A. No.185/2015 seeking impleadment as additional respondent 3 and 4. Ext.P11 is the copy of the said interim application. The court below dismissed the said application through Ext.P22 order observing that, the respondent herein had relinquished her claims against the deceased husband, who was the 1st respondent before the court below. The case is continued against the 2nd respondent alone, who is the 2nd petitioner herein. Since the respondent herein had relinquished her claims against the deceased husband, the court observed that impleadment sought for by his legal representatives is not sustainable. The court below further

observed that, on the death of the 1st respondent, the respondent herein and their child are entitled to succeed to the estate of the deceased as legal heirs. Hence it is observed that the parents are not entitled to get themselves impleaded in the case as legal representatives and therefore the said application is dismissed. It is aggrieved by Ext.P22 order this original petition is filed.

3. Contentions in this original petition is to the effect that, the parents of the deceased husband ought to have been permitted to get impleaded as they are proper and essential parties, in order to put forth the truth involved, they being parties aware and familiar with facts and circumstances of the case. It is also contended that the denial of permitting impleadment will cause prejudice to the parents, since various other proceedings related to the matrimonial disputes are pending before the Family Court

and before other courts.

4. While considering the challenge against Ext.P22 order, this court is of the opinion that the above original petition is filed on a total misconception. First of all, it is not clear or evident as to who had approached the court below for seeking impleadment. From Ext.P11 it is evident that the affidavit in support of the impleadment application was sworn to by Smt. Saraswathy Amma, who is the mother of the deceased person. But from the interim application it is evident that original respondents in the case before the Family Court alone are cited as petitioners and they sought impleadment of the parents of the deceased as additional respondents 3 and 4. Under such circumstances it cannot be said that it is the parents who have approached the court seeking the impleadment.

5. However, we notice that this original petition

under article 227 is instituted by the 2nd respondent in the original petition before the Family Court. He cannot have any grievance with respect to denial of impleadment of the parents of the deceased person as his legal heirs. Further, it is evident that the claim against the deceased person stands relinquished. It is evident from the objections filed by the respondent herein to I.A. No.185/2015, copy of which is produced as Ext.P12, that the respondent herein had filed a memo before the court below on 29.04.2014 relinquishing claims against the deceased original 1st respondent. Therefore the court below was perfectly right and justified in denying the request for impleadment.

6. However, it is made clear that the petitioner herein (2nd petitioner), who is the 2nd respondent in original petition, will be entitled to contest the case on merits by filing appropriate pleadings. It is stated by the learned

counsel appearing for the petitioner that he is being represented before the Family Court through his father as power of attorney holder, who is one among the persons sought to be impleaded. If the Family Court had permitted the said petitioner to contest the case through his power of attorney, the said power of attorney holder will be entitled to take all appropriate steps to complete the pleadings or to participate in the trial, subject to orders of the Family Court.

9. This court takes note of the fact that the Family Court while dismissing the I.A. for impleadment had observed in Ext.P22 order that, the respondent herein along with the child are entitled to succeed estate of the deceased as legal heirs. Such an observation was totally unwarranted for disposal of the application, and it was made without ascertaining as to whether any other family members of the deceased is surviving who are entitled to succeed his estate.

Therefore, while dismissing the above original petition, we make it clear such an observation cannot be made use of in any manner to contest that the respondent herein or her child alone will be entitled to succeed the estate.

Sd/-
C.K. ABDUL REHIM
JUDGE

Sd/-
MARY JOSEPH
JUDGE

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