

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM
&
THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

FRIDAY, THE 5TH DAY OF JUNE 2015/15TH JYAISHTA, 1937

OP (FC).No. 123 of 2015 (R)

AGAINST THE ORDER IN I.A.NO.206/15 IN OP.NO.432/13,O.P.NO.185/13 &
M.C.NO.155/13 OF FAMILY COURT, TIRUR

PETITIONERS/PETITIONERS:

1. DEEPA .C, AGED 39 YEARS,
D/O.SREEDHARA PANICKER, DEEPA NIVAS
KANAMANGALAM AMSOM, DESOM, VENGARA PO,
THIRURANGADI, MALAPPURAM DISTRICT.

2. VYSAKH NANDAN C.,
S/O.SADANANDAN, AGED 16 YEARS (MINOR)

3. MEDHA NANDAN C.,
D/O.SADANANDAN,
AGED 11 YEARS (MINOR).
PETITIONERS 2 & 3 REP.
BY MOTHER AND GUARDIAN DEEPA C.
AGED 39 YEARS, D/O.SREEDHARA PANICKER, DEEPA NIVAS
KANAMANGALAM AMSOM, DESOM, VENGARA PO
THIRURANGADI, MALAPPURAM DISTRICT.

BY ADV. DEEPA C. (PARTY-IN-PERSON)

RESPONDENT/RESPONDENT:

SADANANDAN.P., AGED 49 YEARS,
S/O.ACHUTHAN NAIR, KANAKA VILAS, KOTUR,
INDIANUR PO, KOTTAKKAL, MALAPPURAM-676 503.

BY ADV. SRI.P.VENUGOPAL (1086/92)

THIS OP (FAMILY COURT) HAVING BEEN FINALLY HEARD ON
05-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP (FC).No. 123 of 2015 (R)

APPENDIX

PETITIONERS' EXHIBITS:

EXT. P1: TRUE COPY OF THE AFFIDAVIT WITH PETITION IN IA.NO.206/2015 IN
OP. 432/2013, OP 185/2013 & MC 155/2013 OF THE FAMILY COURT, TIRUR.

EXT P2 : TRUE COPY OF THE ORDER DATED 04-03-2015 IN IA.NO.206/2015 IN
OP.432/2013, OP 185/2013 & MC 155/2013 PASSED BY THE FAMILY COURT,
TIRUR.

RESPONDENT'S EXHIBITS: NIL

/TRUE COPY/

P.S TO JUDGE

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C.K. ABDUL REHIM & K. RAMAKRISHNAN, JJ.

.....
O.P.(FC)No.123 of 2015

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Dated this the 5th day of June, 2015.

JUDGMENT

Ramakrishnan, J:

The Petitioners in I.A.No.206/2015 in O.P.No.432/2013, O.P.No.185/2013 and M.C.No.155/2013 on the file of the Family Court, Tirur have filed this petition challenging the order under Article 227 of the Constitution of India.

2. These three petitions were filed by the petitioners herein seeking various reliefs including return of gold ornaments, past maintenance and future maintenance. A joint trial was allowed and evidence was recorded in one of the cases. Petitioners' evidence was over and thereafter the case was posted for respondent's evidence and examination of the respondent was over on 6.1.2015. Thereafter it was posted for further evidence and then for hearing.

3. The petitioners filed the present I.A for recalling RW1 for further cross examination on the ground that the counsel who appeared for them did not put material questions

to the witness and the first respondent is conducting the case in person and unless those things are put to the witness and answers are elicited, that is likely to affect their case adversely. A counter was filed by the other side opposing the application. The Family Court Judge by the impugned order dismissed the application against which the present petition has been filed to set aside the order invoking the supervisory jurisdiction under Article 227 of the Constitution of India.

4. Heard the first petitioner, who appeared in person and Sri. Venugopal, learned counsel appearing for the respondent.

5. The grievance of the petitioners is that though counsels have appeared for them, they were not conducted the case properly and the counsel who appeared for them did not put relevant questions regarding the claim of the petitioners and unless the petitioners are permitted to further cross examine the witness, serious hardship will be caused to them.

6. On the other hand, learned counsel for the respondent submitted that on several occasions when the respondent was present for giving evidence, at the instance of the petitioners, the case was adjourned and he had to go back abroad and each time he will have to come from abroad to attend the case.

Even on 6.1.2015 the witness was present and he was cross examined by a senior counsel of the bar at Trirur and he left India on 17.1.2015 after his examination was over and this fact was known to the petitioners. In fact if the petitioners had got any grievance and they wanted to recall the witness, they could have filed an application at the time when the respondent was in India, so that financial loss to the respondent to come to India from abroad again for this purpose could have avoided. The petitioners filed the petition on 28.1.2015 knowing that the respondent had left India. There is no bonafides on the part of the petitioners and it is only to harass the respondent that the present petition has been filed.

7. We have gone through the order passed by the court below and also considered the submissions made by both sides. It cannot be said that any illegality has been committed by the court below in dismissing the application. However grievance of the petitioners was that relevant questions that ought to have been put to the witness namely the respondent regarding the claims made in the three cases which according to the petitioners are relevant for disposal of the case have not been put and the petitioners have come to know about only later

and that prompted the petitioners to file the application. Now the petitioners are conducting the case personally through the first petitioner. Therefore we feel that an opportunity has to be given to the petitioners for further cross examination of the witness, RW1. But at the same time considering the circumstances, we cannot grant the same as of right, but that can be allowed only on costs. So the petition is allowed on payment of cost of Rs.1,500/- to the respondent. The petitioners are granted three weeks time to deposit the amount before the court below or pay the same to the counsel for the respondent in the lower court. If the amount is deposited or produced the receipt for payment of the amount to the counsel for the respondent in the lower court, then the lower court is directed to allow the application and fix the date for appearance of RW1 for further cross examination after considering convenience of the respondent. If on the date the respondent is present, the Family Court is directed to proceed with cross examination of the witness by the first petitioner and no adjournment should be granted for that purpose for examining the witness. If the petitioners did not pay the amount or deposit the amount as directed within the time limit, then the order passed by the

court below will be restored. If the petitioners refuse to cross examine the witness on the date on which he is present as directed by the Family Court, then the court below can close the evidence and dispose of the case on the basis of the evidence available on record after hearing both sides in accordance with law.

With the above directions and observations this petition is disposed of.

Sd/-

C.K. ABDUL REHIM, JUDGE.

Sd/-

K. RAMAKRISHNAN, JUDGE.

/true copy/

P.S to Judge

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