

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

TUESDAY, THE 26TH DAY OF MAY 2015/5TH JYAISHTA, 1937

OP (FC).No. 134 of 2015 ()

(IA.NO.30/2015 IN OP.NO. 551/2014 OF FAMILY COURT, MUVATTUPUZHA)

PETITIONER :

SINNY JOSHI,AGED 45 YEARS,
W/O JOSHI, NO.48, SINNI VILLA,
7TH BLOCK, IST MAIN, KORAMANGALA,
BANGALORE-560 095

BY ADVS.SRI.P.GOPINATHAN
SRI.AYPE JOSEPH

RESPONDENT :

T.B.JOSHI, AGED 55 YEARS,
S/O BALAKRISHNAN, 1/1, 1ST CROSS ROAD,
IST FLOOR, WILSON GARDEN, BANGALORE-560 027.

BY ADV. SRI.T.V.GEORGE

THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION
ON 26-05-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

sts

OP (FC).No. 134 of 2015 ()

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1: TRUE COPY OF THE PETITION IN O.P.NO.551/14 ON THE FILE OF THE FAMILY COURT, MUVATTUPUZZHA.

EXHIBIT P2: TRUE COPY OF PETITION IA NO.30/2015 O.P.NO.551/14 ON THE FILE OF THE FAMILY COURT MUVATTUPUZZHA.

EXHIBIT P3: TRUE COPY OF THE OBJECTION FILED BY RESPONDENT IN IA NO.30/2015 IN O.P.NO.551/14.

EXHIBIT P4: TRUE COPY OF ORDER IN IA NO.30/2015 IN O.P.NO.551/14 ON THE FILE OF THE FAMILY COURT, MUVATTUPUZZHA.

RESPONDENT(S)' EXHIBITS:

NIL

/TRUE COPY/

P.A.TO JUDGE

sts

**C.K. ABDUL REHIM, J.
&
K. RAMAKRISHNAN, J.**

O.P (FC) No. 134 OF 2015

DATED THIS THE 26th DAY OF MAY, 2015

J U D G M E N T

K. Ramakrishnan, J:

The petitioner in I.A. No.30/2015 in OP No.551/2015 on the file of the Family Court, Muvattupuzha has filed this application challenging Ext.P4 order of the Family Court dismissing the application filed by the petitioner.

2. The OP 551/2014 was filed by the respondent herein who is none other than the husband of the petitioner seeking injunction restraining her from alienating or encumbering or transferring the petition schedule property to any other persons other than the children of the petitioner and the respondent. The allegation in the proceedings was that the property was purchased by the respondent herein in the name of the petitioner spending his money for the benefit of the children. The allegation was that she is now trying to alienate the property depriving the

benefit to the children and so the suit was necessitated. The respondent who is the petitioner herein appeared and filed the present petition, IA 30/2015 under Section 10 of Family Courts Act read with Order VII Rule 10 of the Code of Civil Procedure stating that the family court has no jurisdiction to entertain a dispute as it will not come under the purview of the family court. It is not a dispute between the spouses and the real dispute raised in the petition was as to who is entitled to get the property namely the children who cannot file the suit before the family court as then, it cannot said to be a dispute between the spouses which alone can be decided by the Family Court. The relief in the petition was to return the above OP to the respondent therein/petitioner in the OP to be presented in the court court at Bangalore having jurisdiction in the area which includes, "7th Block, 1st A Main, Koramangala, Bangalooore, Karnataka State, PIN-560 095" which is a place of the respondent in that application.

3. The respondent filed counter affidavit stating that the property is situated within the jurisdiction of the Family Court Muvattupuzha and the real dispute is who is the owner of the property and the property was purchased in the name of wife by the husband for the benefit of the children and really it is a dispute between the spouses regarding who among them had purchased the property and for whose benefit it was really purchased. So it will fall under Section 7 of the Family Courts Act.

4. After considering the rival contentions of both parties learned Family Court Judge by Ext.P8 order dismissed the application stating that, that court has jurisdiction to entertain the petition. Aggrieved by the same the present petition has been filed.

5. Heard the counsel for the petitioner and respondent.

6. Counsel for the petitioner submitted that the real beneficiaries even according to the respondent herein was the children and it is for them to maintain the suit to

declare the right in the property and if that be the case they cannot file a suit before the family court and they will have to approach the civil court to get their right declared. So according to him the court Family Court has no jurisdiction to entertain the suit. He relied on the decision reported in **Devaki Antharjanam V. Narayanan Namboodiri (2006 (2) KLT 1022)** in support of his case.

7. On the other hand, learned counsel for the respondent relied on the decision reported in **Shihabudeen V. Seenath (2013 (1) KHC 738 (DB))** in which the Division Bench of this court has held that in respect of the property dispute between parties to the marriage the OP has to be instituted only within the local limits of the Family Court within whose jurisdiction the property is situated. He had also submitted it is really a dispute between the husband and wife regarding the manner in which the acquisition of the property was made and on whose benefit it was purchased.

8. The suit was filed by the husband against the wife for injunction restraining her from alienating or encumbering or transferring the property scheduled to the petition. The property is situated within the jurisdiction of Family Court, Muvattupuzha. It is true that both the parties are residing in Bangalore. But as regards the property disputes are concerned under Section 16 of the Code of Civil Procedure, a suit or proceedings will have to be initiated within whose jurisdiction the property is situated.

9. Section 7 of the Family Courts Act deals with jurisdiction of the court which reads as follows:

“7. Jurisdiction.- (1) Subject to the other provisions of this Act, a Family Court shall-

(a) have and exercise all the jurisdiction exercisable by any District Court or any subordinate Civil Court under any law for the time being in force in respect of suits and proceedings of the nature referred to in the Explanation; and

(b) be deemed, for the purpose of exercising such jurisdiction under such law, to be a District Court or, as the case may be, such subordinate Civil Court for the area to which the jurisdiction of the Family Court extends.

Explanation.- The suits and proceedings referred to in this sub-section are suits and proceedings of the

following nature, namely:-

(a) a suit or proceeding between the parties to a marriage for a decree of nullity of marriage (declaring the marriage to be null and void or, as the case may be, annulling the marriage) or restitution of conjugal rights or judicial separation or dissolution of marriage;

(b) a suit or proceeding for a declaration as to the validity of a marriage or as to the matrimonial status of any person;

(c) a suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them;

(d) a suit or proceeding for an order of injunction in circumstances arising out of a marital relationship.

(e) a suit or proceeding for a declaration as to the legitimacy of any person;

(f) a suit or proceeding for maintenance.

(g) a suit or proceeding in relation to the guardianship of the person or the custody of, or access to, any minor.

(2) Subject to the other provisions of this Act, a Family Court shall also have and exercise-

(a) the jurisdiction exercisable by a Magistrate of the First Class under Chapter IX (relating to order for maintenance of wife, children and parents) of the Code of Civil Procedure, 1973 (2 of 1974); and

(b) such other jurisdiction as may be conferred on it by any other enactment."

10. Section 7 1 (c) deals with a suit or proceedings between parties to the marriage with respect to the property of the parties or either of them. In this case the suit is between the spouses. The property is now in the name of the petitioner and the allegation was that the property was purchased by the husband in the name of wife not for herself but for the benefit of the children. So really it is dispute between the spouses regarding right over the property and that will fall under Section 7 (1) (c) of the Family Courts Act and Family Court has jurisdiction to entertain such a dispute between the spouses in respect of the property in question.

11. Further in the decision reported in **Shihabudeen V. Seenath (2013 (1) KHC 738 (DB)** this court has observed that in a case where there is dispute between parties to the marriage in respect of a property then the OP can be instituted only within the local limits of the Family Court within whose jurisdiction the property is situated. So under the circumstances the dictum laid down in the

decision in **Devaki Antharjanam V. Narayanan Namboodiri (2006 (2) KLT 1022** is not applicable to the facts of this case. So the Family Court was perfectly justified in coming to the conclusion that the petition is maintainable before the court and there is no illegality committed by the court below in passing the impugned order warranting interference of this court invoking the supervisory jurisdiction under Article 227 of the Constitution of India. So the petition lacks merit and the same is dismissed.

Sd/-

C.K. ABDUL REHIM, JUDGE.

Sd/-

K. RAMAKRISHNAN, JUDGE.

AMG

True copy

P.A. to Judge