

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 17TH DAY OF JULY 2015/26TH ASHADHA, 1937

OP (FC).No. 141 of 2015 (R)

AGAINST THE ORDER IN IA 881/2014 of FAMILY COURT, IRINJALAKUDA DATED
27-03-2015

PETITIONER:

LINESH, AGED 30 YEARS,
S/O.CHANDRASEKHARAN, KINATTIERAPARAMBIL HOUSE,
EDATHIRINJI VILLAGE AND DESOM, MUKUNDAPURAM TALUK.

BY ADV. SRI.T.N.MANOJ

RESPONDENT:

DINI,
W/O.LINESH, KOCHIPARAMBATH HOUSE,
PERINJANAM EAST DESOM, PERINJANAM VILLAGE,
REPRESENTED BY THE FATHER AND GUARDIAN DEVADAS,
KOCHIPARAMBATH HOUSE, PERINJANAM EAST DESOM
PERINJANAM VILLAGE, KODUNGALLUR TALUK - 686 156.

BY ADV. SRI.K.B.GANGESH

THIS OP (FAMILY COURT) HAVING BEEN FINALLY HEARD ON
17-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP (FC) .No. 141 of 2015 (R)

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 COPY OF THE UNNUMBERED OP BEFORE THE FAMILY COURT AT
IRINJALAKUDA.

EXT.P2 COPY OF IA.NO.881/14 FILED IN UNNUMBERED OP BEFORE THE FAMILY
COURT AT IRINJALAKUDA.

EXT.P3 COPY OF THE ORDER IN IA.881/14 DATED 27.3.15 IN THE UNNUMBERED
OP OF THE FAMILY COURT AT IRINJALAKUDA.

/TRUE COPY/

P.S TO JUDGE

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

.....
O.P.(FC)No.141 of 2015
.....

Dated this the 17th day of July, 2015.

JUDGMENT

Ramakrishnan, J:

This original petition is filed by the petitioner in I.A.No.881/2014 in an unnumbered original petition of 2014 before the Family Court, Irinjalakuda challenging the order passed by that court under Article 227 of the Constitution of India.

2. The petitioner herein filed the original petition for a declaration that marriage between the petitioner and the respondent is a nullity on the ground that she was insane and that fact was suppressed at the time of marriage. Along with the original petition, the petitioner filed I.A.No. 881/2014 under Order XXXII Rule 3 read with Rule 15 of the Civil Procedure Code seeking appointment of a guardian for the respondent alleging that she is mentally ill and unable to prosecute the case and so as to protect her interest, a guardian will have to be appointed. In that application, as part of enquiry, the court below issued notice to the respondent and the respondent

entered appearance and filed counter and conducted enquiry by interacting with the respondent and ultimately the court below passed Ext.P3 order declining appointment of next friend for the respondent and also directed the petitioner to pay cost of Rs. 5,000/- and further ordered that if the petitioner did not deposit the amount, the original petition need not be numbered. This order is being challenged by the petitioner by filing this petition.

3. Heard counsel for the petitioner and the respondent.

4. Counsel for the petitioner submitted that the court below is entitled to conduct enquiry under Order XXXII Rule 3 read with Rule 15 of the Civil Procedure Code to find out as to whether the respondent is capable for conducting the case by herself or whether a guardian will have to be appointed to prosecute the case on her behalf. If the court is satisfied that the respondent is capable of conducting the case by herself, it is contended that, the application for appointment of a guardian can be dismissed and she can be permitted to prosecute the case by herself. In this case, the court below had exceeded jurisdiction and recorded a finding that she is not insane and

she is not suffering from any illness and also directed the petitioner to pay cost of Rs.5,000/-. There is no finding that it is a frivolous or vexatious petition and as such the order passed by the court below is illegal.

5. On the other hand, counsel for the respondent submitted that the court below had found that there is no merit in the petition and the petitioner wanted to project the respondent as an insane person, with some malafides that the application was filed. So the court below was perfectly justified in dismissing the application with costs.

6. It is an admitted fact that the petitioner married the respondent in the year 2012 and he filed a petition for declaration that the marriage between the petitioner and the respondent is a nullity on the ground that she was a mentally challenged person and incapable of leading a normal marital life and she is undergoing treatment for mental illness even prior to the marriage and that fact was suppressed at the time of marriage. According to the petitioner, the respondent is still undergoing treatment and she cannot conduct the case by herself. So he filed I.A.No.881/2014 along with the original

petition to appoint a guardian namely her father to conduct the case. He had also summoned certain documents and marked the same as Ext.X1 and also examined the witness including the doctors who treated the respondent as CW1 to CW3 to show his bonafides.

7. It is true that the respondent appeared in person and filed counter and the court below also conducted an enquiry by interaction with her and formed an opinion that she is not mentally ill or incapable for prosecuting the case by herself on account of mental illness. The court below can stop the enquiry there and dismiss the application but instead proceeded with further enquiry in the application by conducting a detailed enquiry by giving liberty to the petitioner to adduce evidence on this aspect and thereafter came to the conclusion that the respondent is not an insane person or mentally ill person and there is no necessity to appoint a guardian for her to conduct the case. But, there is no finding that the allegation itself was made with some malafide intention to project the respondent as an insane person with ulterior motive so as to order cost in the application. If the court below was satisfied, on a

preliminary enquiry by examining the respondent herself and that enquiry is sufficient to dispose of the application by forming opinion on the mental status, then the court below need not have made further venture of examining the doctors for considering that aspect as an enquiry under Order XXXII Rule 3 read with Rule 15 is only a formal enquiry and no detailed enquiry is required for that purpose. So, under the circumstances, the court below was justified in rejecting the application on satisfaction that there is no necessity to appoint a guardian or next friend for the respondent to conduct the case. But the order passed by the court below to the extent imposing cost of Rs.5,000/- as a condition for numbering the unnumbered petition is unsustainable in law and the same is liable to be set aside. So the order passed by the court below imposing cost of Rs.5,000/- as a condition for numbering the original petition filed by the petitioner seeking a declaration of the marriage as a nullity is set aside and the court below is directed to number the original petition and proceed with the original petition in accordance with law. It is made clear that any finding arrived at by the court below for disposing the

application can only be treated for a limited purpose of considering the question as to whether the petition to appoint a guardian for the respondent to conduct the case has to be allowed or not and that cannot be taken as a ground or reason for deciding the original petition on merit. If the petitioner adduces any evidence regarding mental status of the respondent in the main proceedings, then the court below is directed to consider that evidence and record appropriate findings independently in the main proceedings in accordance with law untrammelled by the observations made by the court below regarding the mental status of the respondent in the interim application.

With the above directions and observations, this original petition is allowed in part and disposed of accordingly.

Sd/-

C.K.ABDUL REHIM, JUDGE.

Sd/-

K. RAMAKRISHNAN, JUDGE.

/true copy/

P.S to Judge

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