

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

THURSDAY, THE 16TH DAY OF JULY 2015/25TH ASHADHA, 1937

OP (FC).No. 197 of 2015 (R)

AGAINST THE ORDER IN OP 241/2015 of FAMILY COURT, ATTINGAL
DATED 18-03-2015

PETITIONER/RESPONDENT:

GIREESH BABU, AGED 40 YEARS,
S/O.KUMAR, LOTUS VILLA, VADAYIL,
MENAMKULAM, KAZHAKKUTTOM, THIRUVANANTHAPURAM

BY ADV. SRI.V.S.BABU GIREESAN

RESPONDENT/PETITIONER:

MANJU C.K., AGED 33 YEARS,
D/O.CHANDRAMATHI, K.C BHAVAN, KOPPAM,
PIRAPPANCODE P.O, MARIKKAL VILLAGE,
NEDUMANGADU 695 607

BY ADV. SRI.M.R.RAJESH

THIS OP (FAMILY COURT) HAVING BEEN FINALLY HEARD ON
16-07-2015, ALONG WITH OPFC.NO.198/2015, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXHBIIT P1 TRUE COPY OF THE ORDER DATED 10-02-2015 OF THE SESSIONS JUDGE, THIRUVANANTHAPURAM.

EXHBITI P2 TRUE COPY OF THE CAVEAT PETITION IN O.P NO 17 OF 2015 OF THE FAMILY COURT, THIRUVANANTHAPURAM.

EXHBIIT P3 TRUE COPY OF THE PETITION IN O.P NO 241/15.

EXHBITI P4 TRUE COPY OF THE MEMO DATED 17/3/2015 IN O.P NO 241/15.

EXHBITI P5 TRUE COPY OF THE ORDER DATED 18/3/2015 OF THE FAMILY COURT ATTINGAL IN O.P NO 241/2015.

EXHBIIT P6 TRUE COPY OF THE O.P NO 294/2015 OF THE FAMILY COURT, NEDUMANGADU.

EXHBITI P7 THE ORDER DATED 24/4/2015 IN ZOPFC NO 305/2015

RESPONDENT'S EXHIBITS: NIL

/TRUE COPY/

P.S TO JUDGE

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

.....
OP(FC)Nos.197 & 198 of 2015

.....
Dated this the 16th day of July, 2015.

JUDGMENT

Ramakrishnan, J:

The petitioner in both these cases, who is the respondent in OP.Nos.241/2015 and 240/2015 on the file of the Family Court, Attingal has filed these writ petitions challenging Ext.P5 order passed in both these cases under Article 227 of the Constitution of India.

2. The petitioner and the respondent were husband and wife and the respondent filed O.P.No.241/2015 for return of gold ornaments, money and other articles while O.P.No.240/2015 was filed for divorce. The petitioner, who is the respondent in both the cases before the court below moved interim application and raised the question of jurisdiction of the court to entertain the cases itself. Later counsel for the respondent herein filed Ext.P4 memo before the court below stating that the original petitions were filed on the mistaken jurisdiction and she may be permitted to withdraw the same with liberty to file fresh applications. The court below without hearing other side passed Ext.P5 orders in both the cases in

both the memos permitting the petitioner in both the cases to withdraw the original petitions with permission to file a fresh original petitions. Further, on the basis of this, it is alleged in the petition that Ext.P6 fresh petition in both the cases have been filed before the Family Court, Nedumangad. The petitioner herein is challenging Ext.P5 order passed by the court below and also to quash Ext.P6 petition filed before the Family Court, Nedumangad in both the cases on the basis of Ext.P5 order passed in both the cases.

3. Heard counsel for the petitioner and the respondent.

4. Counsel for the petitioner in both the cases submitted that court below had committed serious illegality in allowing withdrawal of the original petition on the basis of the memo, which ought not have been done by the court below, that too without hearing the counsel for the respondent in the lower court, who is the petitioner herein.

5. On the other hand, counsel for the respondent submitted that the respondent had no objection in allowing the original petition setting aside the order giving liberty for the petitioner to move a proper petition before the court below for withdrawal of the petition for presentation before the proper

court. In one of the cases, there is no vakalath filed for the respondent in the lower court, though he appeared through counsel in both the cases.

6. It is an admitted fact that the petitioner and respondent are man and wife and their relationship strained and they were living separately. It is also an admitted fact that O.P.No.241/2015 was filed for recovery of money and gold ornaments while O.P.No.240/2015 was filed by the respondent herein for divorce and both these cases were filed before the Family Court, Attingal. It is also in a way admitted that the respondent in the lower court appeared through counsel and he raised the question of jurisdiction of that court to entertain the petitions. It is on that basis it appears that a memo has been filed on the side of the respondent herein permitting her to withdraw the original petition with liberty to file a fresh original petition in both these cases and the impugned Ext.P5 orders were passed on those memos. It may be mentioned here that the court below ought not have been passed orders on the memo filed by the counsel for the petitioner in the lower court. If there is any formal defect in filing of the original petition and it is likely to affect the result of the case and if the

parties want to file a fresh original petition on the same cause of action for the same relief or want to present it before the proper court, then either they ought to have filed an application under Order XXIII Rule 1 for permission to withdraw the case with liberty to file fresh case on the same cause of action or under Order VII Rule 10 A of the Code of Civil Procedure to return the petition for presentation before proper court and if such an application is filed, the court below ought to have heard both sides especially when it appears that there was appearance for the parties and passed appropriate orders in these applications in accordance with law. So, under the circumstances, there is some force in the submission made by the counsel for the petitioner that Ext.P5 order passed by the court below in both the cases is illegal and the same is liable to be set aside and we feel that the same are liable to be set aside. So Ext.P5 order in both the cases passed by the court below on the basis of the memo filed permitting the respondent herein to withdraw the petition with liberty to file fresh original petition are set aside and the matter is remitted back to the court below for a fresh disposal in accordance with law. If the respondent files a proper application either for withdrawal of the original

petition with liberty to file a fresh original petition on the same cause of action or to return the petition for presentation before the proper court, then court below is directed to consider that application and pass appropriate orders in that application in accordance with law after giving opportunity for hearing to the respondent, if there is appearance for the parties in the lower court.

7. As regards Ext.P6 petition is concerned, the petitioner is at liberty to move that court to raise the question of maintainability and if such a question is raised by filing an application, then that court is at liberty to consider and pass appropriate orders in that application after hearing both sides on merit.

With the above directions and observations, both the original petitions are allowed in part.

Sd/-
C.K.ABDUL REHIM, JUDGE.

Sd/-
K. RAMAKRISHNAN, JUDGE.

cl

/true copy/

P.S to Judge

