

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE C.K.ABDUL REHIM
&
THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

FRIDAY, THE 26TH DAY OF JUNE 2015/5TH ASHADHA, 1937

OP (FC).No. 206 of 2015 (R)

AGAINST THE ORDER IN I.A.No.849/15 IN OP 1454/2013 & O.P.No.494/11 of FAMILY
COURT, THRISSUR DATED 26.2.2015

PETITIONER:

SHAJITHA AGED 35 YEARS
D/O JABBAR, KARAPPAM VEETIL, MULLAKKARA
THOTTAPPADI DESOM, OLLUKKARA VILLAGE, THRISSUR.

BY ADVS.SRI.P.VIJAYA BHANU (SR.)
SMT.M.M.DEEPA
SRI.VIPIN NARAYAN

RESPONDENT:

UMMER, AGED 39 YEARS
S/O AISHAKUTTY, KAYAMKULAM VEEDU, MANNUTHY DESOM
OLLUKKARA VILLAGE, THRISSUR.

THIS OP (FAMILY COURT) HAVING BEEN FINALLY HEARD ON 26-06-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP (FC).No. 206 of 2015 (R)

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1: TRUE COPY OF THE ORIGINAL PETITION NO.1454 OF 2013 ON THE FILES OF THE FAMILY COURT, THRISSUR.
- EXHIBIT P2: TRUE COPY OF THE O.P.NO.494 OF 2011 ON THE FILE OF THE FAMILY COURT, THRISSUR.
- EXHIBIT P3: TRUE COPY OF THE ORIGINAL PETITION NO.259 OF 2015 ON THE FILE OF THE FAMILY COURT, THRISSUR.
- EXHIBIT P4: TRUE COPY OF THE PETITION IN IA NO.849/2015 IN O.P.NO.494/2011 AND O.P.NO.1454/2013 ON THE FILE OF THE FAMILY COURT, THRISSUR.
- EXHIBIT P5: TRUE COPY OF THE ORDER IN IA NO.849/2015 IN O.P.NO.1454/2013 AND O.P.NO.494/2011 ON THE FILE OF THE FAMILY COURT, THRISSUR DATED 26.2.2015.

RESPONDENT(S)' EXHIBITS: NIL

TRUE COPY

P.S.TO JUDGE

dsn

C.K.ABDUL REHIM & ANIL K.NARENDRAN, JJ.

O.P.(F.C.)No.206 OF 2015

DATED THIS THE 26th DAY OF JUNE, 2015

JUDGMENT

ANIL K.NARENDRAN,J.

Petitioner is the respondent in O.P.No.1454 of 2013 on the file of the Family Court, Thrissur. The said Original Petition was filed by the respondent herein, mainly seeking a declaration that the plaint schedule properties which are in the joint name of the petitioner and the respondent are purchased only with the amount spent by him and the petitioner does not have any right over the said properties. The petitioner has filed O.P.No.494 of 2011 before the Family Court, Thrissur against the respondent seeking restitution of conjugal rights. By order dated 11.12.2014 in I.A.No.5684 of 2014, the Family Court ordered joint trial in O.P.Nos.494 of 2011 and 1454 of 2013.

2. During the pendency of the above original petitions, the petitioner filed O.P.No.259 of 2015 against the respondent for a declaration that the plaint schedule properties which are in the joint name of the petitioner and the respondent are purchased only with

the amount spent by her and the respondent does not have any right over the said properties. The plaint schedule properties in O.P.Nos.1454 of 2013 and 259 of 2015 are one and the same.

3. The petitioner filed I.A.No.849 of 2015 in O.P.Nos.494 of 2011 and 1454 of 2013, seeking joint trial of O.P.No.259 of 2015 along with other two cases. The said application was dismissed by Ext.P5 order of the Family Court dated 26.2.2015, stating that the joint trial, if allowed, would result in considerable delay in the disposal of old cases, i.e., O.P.Nos.494 of 2011 and 1454 of 2013. It is aggrieved by the aforesaid order, the petitioner is before this Court in this O.P.(FC).

4. On 20.5.2015, this O.P.(FC) was admitted on file and urgent notice was issued to the respondent. This Court has also granted an interim order of stay against pronouncement of judgment/final order by the Family Court, Thrissur in O.P.Nos.494 of 2011 and 1454 of 2013, for a period of one month. The Registry was also directed to obtain a report from the Family Court regarding the present stage of all the three cases.

5. Pursuant to the above order passed by this Court, the Registry has obtained a report dated 23.5.2015 from the Family Court. Going by the said report, joint trial in O.P.Nos.494 of 2011 and 1454 of 2013 was ordered, by order dated 11.12.2014 in I.A.No.5684 of 2014. Both these cases are ripe for trial and evidence was ordered to be taken by appointing an Advocate Commissioner. In the meanwhile, on 24.2.2015, the petitioner filed O.P.No.259 of 2015 for a declaration that she is the absolute owner of the plaint schedule properties and the said original petition now stands posted to 13.7.2015 for appearance of the respondent.

6. We heard arguments of the learned counsel for the petitioner. Though notice issued from this Court was served on the respondent, none appears for him.

7. The sole issue that arises for consideration in this O.P. (FC) is as to whether Ext.P5 order passed by the Family Court dismissing I.A.No.849 of 2015 in O.P.Nos.494 of 2011 and 1454 of 2013, on a reasoning that, joint trial, if allowed, would result in considerable delay in the disposal of old cases, i.e.,

O.P.Nos.494 of 2011 and 1454 of 2013, is legally sustainable or not.

8. As per Sub-section (3) of Section 10 of the Family Courts Act, 1984, nothing in Sub-section (1) or Sub-section (2) shall prevent a Family Court from laying down its own procedure with a view to arrive at a settlement in respect of the subject matter of the suit or proceedings or at the truth of the facts alleged by the one party and denied by the other. In **Mukundan v. Dr. Katyusha (2013 (2) KLT 981)** a Division Bench of this Court held that, none of the provisions under the Family Courts Act can be understood as placing an embargo on the Family Court in permitting joint trial of different proceedings before it and in fact it was to take care of such multiply proceedings that Sub-section (3) of Section 10 itself has been incorporated.

9. In **Navabharat Vignan Trust and others v. Nasihudeen and others (2013 (1) KLT 310)** another Division Bench of this Court held that, the circumstances requisite to allow joint trial are that, a common question of law or common question of fact must arise from all such suits; the right to relief

must be in respect of or arising out of same act or transaction or same series of act or transactions in all such suits; and all parties in the suit which is sought to be transferred must be present in the suit with which joint trial is sought for. Therefore, the questions to be considered in an application for joint trial are whether there is any common question of law or fact in all such suits and whether the act or transaction which gives rise to a right to relief is common in all such suits.

10. In the case on hand, by order dated 11.12.2014 in I.A.No.5684 of 2014, the Family Court ordered joint trial in O.P.No.494 of 2011 filed by the petitioner against the respondent seeking restitution of conjugal rights and O.P.No.1454 of 2013 filed by the respondent against the petitioner, mainly seeking a declaration that the plaint schedule properties which are in the joint name of the petitioner and the respondent are purchased only with the amount spent by him and the petitioner does not have any right over the said properties. It was during the pendency of those original petitions, the petitioner filed O.P.No.259 of 2015 against the respondent for a declaration that

the plaint schedule properties which are in the joint name of the petitioner and the respondent are purchased only with the amount spent by her and the respondent does not have any right over the said properties. The plaint schedule properties in O.P.Nos.1454 of 2013 and 259 of 2015 are one and the same. O.P.No.259 of 2015 filed by the petitioner is nothing but a counter claim put forward by her in respect of the plaint claim in O.S.No.1454 of 2013. In such circumstances, in order to avoid conflicting decisions and multiplicity of proceedings, which would consume much time of the Court and the witnesses, the Family Court ought to have allowed the prayer for joint trial sought for in I.A.No.849 of 2015 in O.P.Nos.494 of 2011 and 1454 of 2013, especially when the respondent has no case that the petitioner made such an application with an intention to protract the proceedings or with any oblique motive. Therefore, Ext.P5 order of the Family Court, Thrissur dated 26.2.2015 in I.A.No.849 of 2015 in O.P.Nos.494 of 2011 and 1454 of 2013 cannot be sustained.

11. We, therefore, set aside Ext.P5 order of the Family

Court, Thrissur dated 26.2.2015 in I.A.No.849 of 2015 in O.P.Nos.494 of 2011 and 1454 of 2013 and allow joint trial of O.P.No.259 of 2015 along with O.P.Nos.494 of 2011 and 1454 of 2013, thereby allowing I.A.No.849 of 2015 in O.P.Nos.494 of 2011 and 1454 of 2013.

12. Taking in to consideration the fact that, one among the original petitions is of the year 2011, the Family Court, Thrissur is directed to dispose of O.P.Nos.494 of 2011, 1454 of 2013 and 259 of 2015, as expeditiously as possible.

The O.P.(FC) is disposed of as above. No order as to costs.

Sd/-
C.K.ABDUL REHIM, JUDGE

Sd/-
ANIL K.NARENDRA, JUDGE

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