

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. 217 of 2015 (R)

(IA.NO.31/2015 IN O.P.NO.586/2014 OF FAMILY COURT, MUVATTUPUZHA)

PETITIONER :

T.B.JOSHY, AGED 55 YEARS,
S/O.BALAKRISHNAN, RESIDING AT BUILDING NO.1/1,
1ST CROSS, 1ST FLOOR, WILSON GARDEN,
BANGALORE, PIN: 560 027.

BY ADVS.SRI.T.V.GEORGE
SRI.JIMMY GEORGE (THADATHIL)

RESPONDENT(S):

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1. SMT. SINNI JOSHY, W/O.JOSHY, AGED 45 YEARS,
RESIDING AT BUILDING NO.48, SINNI VILLA,
7TH BLOCK, 1ST A MAIN KORAMANGALA, BANGALORE,
PIN: 560 095.
 2. SUB-REGISTRAR, KOTTAPADY,
OFFICE OF THE SUB-REGISTRAR, KOTTAPADY,
GURUVAYOOR, PIN: 680 101.

R2 BY GOVERNMENT PLEADER SRI.JOBY JOSEPH

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. 217 of 2015 (R)

APPENDIX

PETITIONER(S)' EXHIBITS

P1: TRUE COPY OF THE PLAINT OF O.P.NO.586/14.

P2: TRUE COPY OF THE PETITION IA 31/15 WITH AFFIDAVIT.

P3: TRUE COPY OF OBJECTION TO THE IA 31/15

P4: TRUE COPY OF THE ORDER IN IA 31/15 IN OS. 586/14

RESPONDENT(S)' EXHIBITS:

NIL

/TRUE COPY/

P.A.TO JUDGE

sts

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

O.P (FC) No. 217 OF 2015

DATED THIS THE 26th DAY OF MAY, 2015

J U D G M E N T

K. Ramakrishnan, J:

This petition is filed by the respondent in IA No.31/2015 in OP 586/2014 allowing the application under Article 227 of the Constitution of India.

2. The petitioner herein is the petitioner in OP 586/2014 on the file of the Family Court which was filed by him for an injunction restraining the respondent from alienating or encumbering or transferring the petition schedule property which is situated in Guruvayoor. The allegation was that property was purchased by the petitioner in the name of the respondent by using his funds not for the benefit of the respondent but for the benefit of the children. When she attempted to sell the property, that necessitated the petitioner to file the suit. The respondent herein who is the defendant in that petition appeared and filed I.A 31/2015 as Ext.P2 seeking a relief of return of OP to the 1st respondent to be presented in the proper court at Bangalore where she is now residing. The petitioner filed detailed objection but without considering the

objection the Family Court Judge passed the impugned Ext.P4 order returning the petition to be presented before the proper court which is being challenged by the petitioner by filing this OP.

3. Heard counsel for the petitioner and counsel entered appearance on behalf of the respondent.

4. Main grievance of the petitioner was that the learned Family Court Judge had not adverted to the pleadings and no reasons have been given by the Family Court for passing the impugned order and it is a non-speaking order. According to the counsel for the respondent there is no illegality in the order the property situated not within the jurisdiction of the Family Court, Guruvayoor. Even other wise according to the petitioner this is not maintainable.

5. When an application has been filed seeking certain relief and detailed objection has been filed, there is a duty cast on the Presiding officer to advert to the objection and pass a speaking order giving reasons for the findings for giving the ultimate relief in the petition. In this case there is noting mentioned as to how the court has come to the conclusion that court has no jurisdiction to entertain the petition and it has to be returned. So under the circumstances there is some merit in the

submission made by the counsel for the petitioner that the order passed is unsustainable and the same is liable to be set aside and we do so, and the order allowing the application is set aside and it is remitted to the Family Court for passing a reasoned speaking order after considering the objections raised by parties in the petition and the counter statement. With the above direction this petition is allowed. Parties are directed to appear before the Family Court on 05-06-2015. On that day the Family Court Judge is directed to hear both sides and pass appropriate orders in the application as expeditiously as possible.

Sd/-

C.K. ABDUL REHIM, JUDGE.

Sd/-

K. RAMAKRISHNAN, JUDGE.

AMG

True copy

P.A. to Judge