

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM

&

THE HONOURABLE MRS. JUSTICE MARY JOSEPH

MONDAY, THE 26TH DAY OF OCTOBER 2015/4TH KARTHIKA, 1937

OP (FC).No. 238 of 2015 (R)

AGAINST THE ORDER IN I.A.NO.327/2015 IN OP NO. 492/2013 of THE FAMILY COURT, THALASSERY DATED 21.05.2015

PETITIONER(S)/PETITIONER:

SHAHEEN ABDUL JAMEEL,
S/O.ABDUL KHADER, 'ASHIANA', P.O.CIVIL STATION
CALICUT - 673 020.

BY ADVS.SRI.M.SASINDRAN
SRI.SATHEESAN ALAKKADAN

RESPONDENT(S)/RESPONDENT NOS.1& 2:

1. K.M.SHAREER,
S/O.LATE ABOOBACKER, AGED 60 YEARS, MAIMI MANZIL,
P.O.NALUTHARA, IDAYIL PEEDIKA, MAHE - 673 310.

2. P.C. SAIBU, W/O.SHAREER,
AGED 50 YEARS, RESIDING AT 'JEWELS' (CHERIYATH)
P.O.CHOKLI, CHOKLI AMSOM, MENAPPRAM DESOM
THALASSERY TALUK- 670 672.

R1 BY ADVS. SRI.C.K.SREEJITH
SRI.T.REMESH BABU

THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION ON
26-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP (FC).No. 238 of 2015 (R)

APPENDIX

PETITIONER(S) ' EXHIBITS

P1 - A TRUE COPY OF THE PETITION IN O.P.NO.492 OF 2013 ON THE FILE OF FAMILY COURT, THALASSERY.

P2 - A TRUE COPY OF THE COUNTER STATEMENT FILED BY THE 2ND RESPONDENT IN O.P. NO.492 OF 2013 ON THE FILE OF FAMILY COURT, THALASSERY.

P3 - A TRUE COPY OF THE IMPEADING APPLICATION SUBMITTED BY THE PETITIONER HEREIN BEFORE THE FAMILY COURT THALASSERY AS I.A.NO.327 OF 2015 IN O.P.NO.492 OF 2013

P4 - A TRUE COPY OF THE PLAINT IN O.S.NO.96 OF 2014 ON THE FILE OF COURT OF ADDITIONAL SUBORDINATE JUDGE, THALASSERY.

P5 - A TRUE COPY OF THE ORDER DATED 21.05.2015 IN IA NO.327 OF 2015 IN O.P. NO.492 OF 2013 ON THE FILE OF FAMILY COURT, THALASSERY.

RESPONDENT(S) ' EXHIBITS : NIL

/TRUE COPY/

P. A. TO JUDGE

Pn

**C.K. ABDUL REHIM, J.
&
MARY JOSEPH, J.**

O.P (FC) No. 238 OF 2015

DATED THIS THE 26th DAY OF OCTOBER, 2015

J U D G M E N T

C.K. Abdul Rehim, J:

The petitioner is approaching this court invoking its supervisory jurisdiction vested under Article 227 of the Constitution of India. The petitioner filed IA No.327/2015 in OP No.492/2013 which is pending on the files of the Family Court, Thalassery, seeking impleadment in the said original petition. The original petition was instituted by the 1st respondent herein against the 2nd respondent seeking for partition of the petition scheduled immovable property. The respondents are father-in-law and mother-in-law of the petitioner herein. The petitioner filed IA No.327/2015 seeking impleadment at a stage when the trial of OP No.492/2013 was about to commence before the Family Court. Along with the impleading application he had produced Ext.A1 and A2 series documents which are a

bundle of receipts and an assignment deed. Gist of the case put forth by the petitioner is that the scheduled property was purchased and the building therein was constructed with money sent by him from Gulf country. The court below after conducting an enquiry in the impleading application found that, none of the documents would show that the petitioner herein had sent any amounts either as consideration or for the purpose of getting the land and building. The Family Court found that the documents would disclose only that a huge amounts were send by the petitioner to the 2nd respondent herein and substantial amount was also sent to the wife of the petitioner. But those documents are not disclosing anything to the effect of investing money by the petitioner for the construction of the building or for purchase of the land. On the other hand, the assignment deed discloses that consideration for purchase of the land was fully paid by the 1st respondent herein. The Family Court also found that a suit filed by the petitioner herein before the Sub Court against the respondent is pending disposal. But as far as the original petition before

the Family Court is concerned it is only a matrimonial issue between the respondents herein. It is noticed that the averments would not show that the petitioner herein has got any involvement in the adjudication of the said original petition. The Family Court also found that the petitioner, as a third party had slept over his right and has come forward only at a belated stage, with insufficient materials with an intention to protract the matter. Therefore the impleading sought for was declined. It is aggrieved by Ext.P5 order through which the application for impleading was dismissed, the petitioner is approaching this court.

2. Contention of the petitioner is that the entire money required for purchase of the property as well as for construction of the building was sent by the petitioner, who was working abroad. Therefore it is contended that the petitioner has got a right over the scheduled property. Hence it is argued that the petitioner is a person having interest in the scheduled property and is a person to be impleaded for a proper adjudication of the subject matter of the original petition. In that respect dismissal of the

impleading application was totally illegal and erroneous, is the contention.

3. Exhibit P3 is the application for impleadment filed by the petitioner before the Family Court. Averments in the said application are to the effect that, for the purchase of the scheduled property the 1st respondent had arranged only a small portion of the amounts and remaining portion of sale consideration of the land was paid by the petitioner herein. It is further mentioned that the entire cost of construction of the house in the scheduled property was sent by the petitioner herein through 'Money Exchanges' from Gulf country, in the name of petitioner's wife and her brother as well as in the name of the 2nd respondent and other close relatives of the 1st respondent, in accordance with the necessity of funds at the relevant stages of the construction. According to the petitioner, he has spent a total sum of Rs.43,00,000/- towards construction of the house building. Since the major portion of the sale consideration as well as the cost of the construction of the house was arranged by the petitioner, he was under the

impression that the property and house will be registered in the name of his wife. According to the petitioner the sole intention of the 1st respondent in filing the partition suit is to get the property partitioned, so that he can sell his share to some third parties. Contention of the petitioner is that, the original parties before the Family Court have no manner of right or interest to be partitioned among them, with respect to the scheduled property. It is stated that the petitioner had already filed a suit before the Additional Sub Court, Thalassery as OS No.96/2014 against the respondents herein raising claims based on his right and interest over the property and house situated therein.

4. It is evident that the suit which is pending before the Family Court is one seeking partition of the scheduled property, filed by the husband against the wife. Hence it is a suit between the parties to a marriage with respect to a property of the parties, which is coming specifically within Explanation (c) to Section 7 (1) of the Family Courts Act, 1984. Going by averments contained in the impleading petition, the petitioner has no case that he has got any

partiable right in the scheduled property. On the other hand, claim of the petitioner is that, the scheduled property was purchased and the building therein was constructed by utilizing amounts sent by him from Gulf countries. There is no case for him that he has got ownership or title over the scheduled property. At the best, he can claim only a charge on the property, with respect to the amount spent by him. Learned counsel for the petitioner contended that one of the reliefs now sought for in the civil suit filed as OS No. 96/2014 is for a declaration of the petitioner's right over the scheduled property. Even if it is assumed that the petitioner has got a claim that the property belongs to him, he cannot sue the respondents in the proceedings which is instituted before the Family Court. Therefore it is to be observed that the petitioner has already resorted to the remedy available to him, by filing a civil suit before the court having jurisdiction. In this respect it need to be noticed that, even if partition is allowed by the Family Court, it will not affect the rights of the petitioner which is being agitated before the civil court in OS No.96/2014.

5. Under the above mentioned circumstances, with respect to a claim for partition being agitated between the respondents before the Family court, the petitioner cannot be termed as a necessary party. Hence we are of the opinion that the Family Court has not committed any error in dismissing the impleading application.

6. Learned counsel for the petitioner contended that, had the impleading was allowed, the petitioner could have raised a counter claim before the Family Court, which would have helped in reducing multiplicity of the proceedings. But as observed above it is doubtful as to whether any counter claim can be instituted by the petitioner before the Family Court seeking declaration of title over the property in a suit, which is clearly falling within the purview of Explanation (c) to Section 7 (1) of the Act. Hence we are not impressed to hold that the impleading ought to have been allowed in order to reduce multiplicity of litigations.

7. For the reasons mentioned as above, we are of the considered opinion that the dismissal of the impleading

application, through the impugned order, is perfectly correct and justifiable. We make it clear that the dismissal of the impleading application or any observation contained in the impugned order will not cause any prejudice to the right of the petitioner to be agitated before the civil court in the suit filed as OS No.96/2014.

8. Hence the original petition is dismissed, subject to the observations contained herein above.

Sd/-

C.K. ABDUL REHIM, JUDGE.

Sd/-

MARY JOSEPH, JUDGE.

AMG

True copy

P.A. to Judge