

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 11TH DAY OF AUGUST 2015/20TH SRAVANA, 1937

OP (FC).No. 366 of 2015 (R)

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(IN OP 929/2011 of FAMILY COURT, THIRUVALLA)**

PETITIONER:

**VARGHESE,
AGED 63 YEARS, S/O.LATE KOSHY,
CHARUVIL MANU VILLA, KUMPALAMPOIKA P.O
VADASSERIKKARA VILLAGE, RANNY TALUK
PATHANAMTHITTA DISTRICT.**

**BY ADVS.SRI.V.SETHUNATH
SRI.V.R.MANORANJAN (MUVATTUPUZHA)**

RESPONDENT:

**SUNU ANNIE THOMAS
AGED 30 YEARS, D/O.K.P.THOMAS, KARAKKATTU HOUSE, KUNNAM MURI
VECHOOCHIRA P.O, CHETHACKAL VILLAGE, RANNY TALUK
PATHANAMTHITTA DISTRICT.**

BY ADV. JACOB P.ALEX

**THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION ON 11-08-
2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

AMG

OP (FC).No. 366 of 2015 (R)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1. COPY OF THE PETITION IN OP 929/11 ON THE FILE OF THE FAMILY COURT, THIRUVALLA.

EXHIBIT P2. COPY OF THE JUDGMENT OF THIS COURT IN OP (FC) NO.220/15.

RESPONDENTS' EXHIBITS

NIL

True copy

P.A. To Judge

AMG

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

O.P (FC) No. 366 OF 2015

DATED THIS THE 11th DAY OF AUGUST, 2015

J U D G M E N T

K. Ramakrishnan, J:

Petitioner who is the 2nd respondent in OP 929/2011 on the file of Family Court, Thiruvalla has filed this application dissatisfied with the rejection of oral submission to examine party witnesses under Article 227 of the Constitution of India.

2. It is alleged in the petition that the petitioner is the 2nd respondent and respondent herein is the petitioner in OP 929/2011 on the file of family court, Thiruvalla. Earlier the 1st respondent in the case was examined on the side of the respondent and after that evidence was closed. Thereafter the petitioner filed IA 272/2014 to re-open the evidence to examine additional witnesses furnished along with petition to prove their case. But family court dismissed that application which was challenged by the petitioner before this court by filing OP (FC) 220/2015 and that was allowed by this court as per Ext.P2 judgment on payment of

cost permitting the petitioner to examine the 2nd witness in that witness list alone. After examination of that witness the petitioner offered to examine respondents 2 & 3 also to prove their case orally, but the lower court did not allow the prayer and evidence was closed and now posted for hearing. The objection raised by the court below was that those persons were not shown in the witness list and as such they cannot be examined. Aggrieved by the same the present petition is filed by the petitioner seeking intervention of this court invoking the supervisory jurisdiction.

3. We have ordered notice on admission to the respondent and Adv. Jacob P. Alex appeared for the respondent. Considering the scope of enquiry and also the urgency of the matter this court felt that the petition can be admitted and disposed of today itself after hearing both sides. So the original petition is admitted, heard and disposed of today itself.

4. The counsel for the petitioner submitted that after the case is reopened for further evidence of the respondent

he will be getting an opportunity to adduce further evidence by examining the party to the proceedings as witness, for which no specific witness list need be filed. So the reason for declining the oral submission made by the petitioner for examination of the party witnesses by the family court is unsustainable in law.

5. On the other hand, the counsel for the respondent submitted that it is only delaying tactics on the part of the petitioner that successive applications have been filed. Further after the evidence is over, earlier the application was filed only to examine certain witnesses and at that time he had no grievance of non-examination of the party witnesses and thereafter also no permission of the court was sought for examining the witnesses after re-opening the evidence as well. This court has permitted re-opening of the evidence only for the purpose of examining witness No.2 alone. So under the circumstances the court below was perfectly justified in rejecting the oral submission if any made for further examination of the witnesses by the petitioner.

6. We are not satisfied with the manner in which the petitioner is coming before this court seeking the intervention of this court under Article 227 of the Constitution of India. Earlier after giving opportunity to the parties to adduce evidence and after availing the opportunity by examining 1st respondent as witness in the case, evidence was closed by the court below and it was posted for hearing. At that time the petitioner herein filed IA 272/2014 to re-open the evidence and permit them to examine the additional witnesses submitted along with the petition and that petition was dismissed by the court below which was challenged by him by filing OP (FC) 220/2015 which was allowed by this court as per Ext.P2 judgment imposing a cost of Rs.5,000/- and permitted the petitioner to examine witness No.2 alone in that witness list. Even at that time, petitioner had no grievance for non-examination of further party witnesses in the case.

7. It is true that for the purpose of examining the party witnesses, no separate witness list need be filed. But

once the evidence is closed by examining the party witness and subsequently the case was re-opened only for the purpose of examining certain witnesses alone, then without filing an application for that purpose, on the basis of oral submission alone such a prayer cannot be granted. Further this court while allowing OP (FC) 220/2015 permitted the petitioner to examine only witness No.2 alone considering the fact that the attempt of the petitioner is only to prolong the disposal of the case and that too on payment of heavy cost. So under the circumstances the court below cannot be blamed for not permitting the petitioner to adduce further evidence as the scope of further evidence was restricted by this court by Ext.P2 order.

8. When the application came up for hearing today the counsel for the petitioner submitted that it was due to the oversight of the advocate clerk in not making a prayer for examination of the party witness also in the earlier application filed and only when the additional witness was examined, the counsel felt that further evidence of the party which is required to prove their case and respondents 2 & 3

were also to be examined. It was with that hope that he made an oral representation to the court as evidence has already been re-opened and he will be getting an opportunity to examine party witnesses also. But we feel that the counsel cannot now blame the advocate clerk for not including a prayer for examination of the party witness also if required in the application filed for re-opening the evidence. It is being signed and filed by the advocate as well. However any mistake committed by the advocate should not affect the right of the party to adduce evidence so as to help to the court to come to a right conclusion regarding the lis before that court. So under the circumstances we feel that the petition can be disposed of by directing the petitioner to pay a cost of Rs.10,000/-, out of which Rs.5,000/- to be paid to the counsel for the respondent in the lower court and the balance of Rs.5,000/- to be paid to the Kerala State Mediation and Conciliation Centre, Ernakulam within a week time from today and file an application before the family court for permitting him to examine respondents 2 & 3 also to prove his case along

with the receipt for payment of cost as directed by this court within a period of 2 weeks from today and if such an application is filed, the court below is directed to allow that application and permit the petitioner to examine respondents 2 & 3 also in the case, provided that the party witnesses must be present in court on the date on which the application is filed and they must be prepared to give evidence on the same day. Even if the cost is paid and if the party witnesses are not present on that day, then the benefit of this judgment will not be available to them.

With the above directions and observations this OP (FC) is disposed of.

Communicate this judgment to the court below by fax, immediately.

Sd/-

C.K. ABDUL REHIM, JUDGE.

Sd/-

K. RAMAKRISHNAN, JUDGE.

AMG

True copy

P.A. to Judge