

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 20TH DAY OF AUGUST 2015/29TH SRAVANA, 1937

OP (FC).No. 391 of 2015 ()

PETITIONER/3rd PARTY:

SHARAFUDHEEN,
S/O. SULAIMAN, AGED 30 YEARS,
KANJIKKAL HOUSE, POST PARIYAPURAM, VIA TANUR,
TIRUR TALUK, MALAPPURAM DISTRICT.

BY ADV. SRI.C.M.MOHAMMED IQUABAL

RESPONDENTS/PETITIONER & RESPONDENTS:

1. OORPATTIL AYISHABI,
D/O. AVARANKUTTY, AGED 35 YEARS,
MAYETIL, CHUZHALI P.O., MOONIYUR, TIRURANGADI TALUK,
MALAPPURAM DISTRICT, PIN-676 311.
2. KANJIKKAL YOUSUF,
S/O. SULAIMAN, THAMARAKUTTIYIL HOUSE,
OLAPEEDIKA, POST PARIYAPURAM, TIRUR TALUK,
MALAPPURAM DISTRICT, PIN-676 302.
3. KANJIKKAL KHADEEJA,
W/O. SULAIMAN, THAMARAKUTTIYIL HOUSE,
OLAPEEDIKA, POST PARIYAPURAM, TIRUR TALUK,
MALAPPURAM DISTRICT, PIN-676 302.

THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION ON 20-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

AMG

OP (FC) No.391/2015.

APPENDIX

PETITIONER'S EXHIBITS

- EXT- P1- TRUE COPY OF THE DOCUMENT No.1603/1975 OF SRO, TALUR
DATED 09-11-1975.
- EXT- P2- TRUE COPY OF THE DEATH CERTIFICATE OF SULAIMAN ISSUED BY
TIRURANGADI GRAMA PANCHAYAT DATED 20-06-2011.
- EXT- P3- TRUE COPY OF THE SALE NOTICE ISSUED BY THE FAMILY COURT,
TIRUR IN EP 36/2014 IN OP 782/2009 DATED 23-07-2015.

RESPONDENTS' EXHIBITS

NIL

True copy

P.A. To Judge

AMG

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

O.P (FC) No. 391 OF 2015

DATED THIS THE 20th DAY OF AUGUST, 2015

J U D G M E N T

K. Ramakrishnan, J:

This original petition is filed by the third party who is not a party to the proceedings in EP 36/2014 on the file of Family Court, Tirur approaching this court seeking an intervention of this court under Article 227 of the Constitution of India.

2. It is alleged in the petition that the petitioner is not a party to OP 782/2009 of Family court, Tirur which was filed by the 1st respondent against her husband and mother-in-law who are respondents 2 & 3 for return of gold ornaments and who are the brother and mother of the petitioner as well. The original petition was allowed against the respondents in the original petition i.e. respondents 2 & 3 herein. The 1st respondent filed EP 36/2014 before the Family court, Tirur for sale of property covered by Ext.P1 on the premises that the entire property belongs to the

respondents in the original petition. In fact the respondents 2 & 3 are having only fractional share in the property and petitioner is also having share in the property. If the entire property including his share is sold he will be put to serious hardships. So he approached this court seeking a direction to the family court not to sell his share in the property, hence the petition.

3. Considering the nature of relief claimed in the petition and also considering the fact that the petitioner has not so far moved the family court for this purpose, this court felt that the petition can be disposed of at the admission stage itself, dispensing with notice to the respondents.

4. Heard the counsel for the petitioner. The grievance of the petitioner is that respondents 2 & 3 are not having absolute right over the property sought to be sold as per Ext.P3 sale proclamation. Even in the sale proclamation it was not mentioned that what is sought to be sold only a fractional share of respondents 2 & 3, so that will have to be clarified by this court.

5. The question as to whether the respondents 2 & 3 are the absolute owner of the property and whether the petitioner is having right over the property etc. are matters to be considered by the execution court namely family court if such an objection has been raised by the petitioner by filing an application not to sell the property in the execution of the decree against respondents 2 & 3. Without resorting to that right, the petitioner is not entitled to come to his court seeking such a relief. So under the circumstances we feel that it is not a fit case to invoke supervisory jurisdiction under Article 227 of the Constitution at this stage, especially when the petitioner has not exhausted his remedy of filing application before the execution court itself in accordance with law. We are making it clear that if an application has been filed by the petitioner before the execution court raising his claim over the petition schedule property and if his right is also affected by the sale proclamation, then the court below is directed to consider and dispose of the petition after hearing the other side also

in accordance with law. In the meantime if he files an application for stay or adjournment of the sale, pending disposal of the application, that also can be considered by the execution court and pass appropriate orders in that application.

With the above directions and observations this petition is disposed of.

Office is directed to communicate this judgment to the Family Court, Tirur by fax immediately.

Sd/-

C.K. ABDUL REHIM, JUDGE.

Sd/-

K. RAMAKRISHNAN, JUDGE.

AMG

True copy

P.A. to Judge