

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM
&
THE HONOURABLE MRS. JUSTICE MARY JOSEPH**

SATURDAY, THE 31ST DAY OF JANUARY 2015/11TH MAGHA, 1936

OP (FC).No. 400 of 2015 (R)

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(ARISING FROM OP 127/2011, OP 138/2011 & OP 2363/2010 OF
FAMILY COURT, ERNAKULAM)**

PETITIONER:

**PRADEEP KUMAR V.,
AGED 36 YEARS, S/O. VELAYUDHAN PILLAI,
49/926 C, MOTHER THERESA LANE,
CHANGANPUZHA ROAD, EDAPPALLY P.O.**

BY ADV. SRI.MANU ROY

RESPONDENT:

**BINDHU K.PILLAI,
AGED 34, D/O. KUTTAN PILLAI,
49/926 C, MOTHER THERESA LANE,
CHANGANPUZHA ROAD, EDAPPALLY P.O., PIN-682 024.**

THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION ON 31-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

AMG

OP (FC) No. 400/2015

APPENDIX

PETITIONER'S EXHIBITS

EXT- P1- TRUE COPY OF THE PETITION FILED AS OP No.127/2011.
EXT- P2- TRUE COPY OF THE PETITION FILED AS OP No.2363/2010.
EXT- P3- TRUE COPY OF THE PETITION FILED AS OP No.138/2011.
EXT- P4- TRUE COPY OF THE JUDGMENT IN OP (FC) No.504/2014.
EXT- P5- TRUE COPY OF THE ORDER IN OP (FC) No.195/2015 DATED 08-05-2015.
EXT- P6- TRUE COPY OF THE ORDER DATED 22-06-2015.
EXT- P7- TRUE COPY OF THE PETITION FILED AS IA No.2979/2015.
EXT- P8- TRUE COPY OF THE PROOF AFFIDAVIT IN OP No.127/2011.
EXT- P9- TRUE COPY OF THE SALE DEED No.2704/1/2004.
EXT- P10- TRUE COPY OF THE PETITION FILED AS IA No.3385/2015.
EXT- P11- TRUE COPY OF THE PETITION FILED AS IA No.3384/2015.

RESPONDENTS' EXHIBITS

NIL

True copy

P.A. To Judge

AMG

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

O.P (FC) No. 400 OF 2015

DATED THIS THE 31st DAY OF AUGUST, 2015

J U D G M E N T

C.K. Abdul Rehim, J:

The petitioner is seeking a direction to the Family Court, Ernakulam to allow Exts.P7, P10 & P11 interim applications, filed before that court in OP 127/2011, OP 138/2011 & OP 2363/2010 respectively. OP 2363/2010 was filed by the petitioner seeking dissolution of the marriage existing with the respondent. He had also filed OP 138/2011 seeking partition of certain immovable properties purchased in the joint name of both the parties. The respondent herein had filed OP 127/2011 seeking return of gold ornaments. During pendency of the above said 3 cases, the petitioner had approached this court in OP (FC) No.504/2014 seeking an early disposal of all the cases. By virtue of Ext.P4 judgment this court directed the Family Court to dispose of OP 2363/2010 and OP 138/2011 within a

period of 4 months from 13-01-2015. It is stated that, by virtue of Ext.P6 order, the time limit stipulated was extended for a further period of 4 months from 22-06-2015. It is admitted that all the 3 cases were tried together before the Family court and evidence of the petitioner was completed in 2 cases on 29-04-2015. The cases were adjourned thereafter for recording evidence of the respondent. According to the petitioner the respondent filed proof affidavit on 07-05-2015. Eventhough the petitioner sought for an adjournment for cross-examining the respondent, the Family Court had posted the case to 08-05-2015. The petitioner thereupon approached this court again in OP (FC) No.195/2015 and an interim stay was granted in that case. In the meanwhile the time limit was extended and the cases were re-opened for adducing further evidence. According to the petitioner he had adduced evidence only in 2 cases based on a wrong impression that joint trial was ordered only in those 2 cases. When it was realized that the Family Court has ordered joint trial of all the 3 cases, it was realized that the petitioner had not adduced any evidence in

OP 127/2011. Hence Ext.P7 interim application was filed seeking to re-open the evidence in OP 127/2011.

2. So also the petitioner had filed Ext.P10 application as IA 3385/2015 in OP 138/2011 seeking to re-open evidence for examination of the vendor of the property. The petitioner had also filed Ext.P11 application as IA 3384/2015 in OP 2363/2010 seeking amendment of the original petition by adding more prayers to the effect of seeking declaration of the marriage as null and void.

3. Grievance of the petitioner is that on 18-08-2015 when the Family Court considered Exts.P7, P10 & P11 applications, the learned Judge expressed the view that those applications could not be considered since the time limit stipulated by this court will expire on 22-10-2015. Without considering those applications the cases were posted for final hearing on 21-08-2015. Under such circumstances the petitioner is approaching this court seeking for a direction as mentioned above.

4. When the case is taken up for consideration on today, learned counsel appearing for the petitioner

conceded that Exts.P7, P10 & P11 applications were already dismissed by the Family Court on 21-08-2015. It was also pointed out that by virtue of Ext.P6 order this court had extended the time limit till 22-10-2015 and therefore the court below ought to have considered those applications on merits. It is further mentioned that the cases were adjourned before the Family Court to today, for final hearing. Apprehension expressed is that the Family Court may dispose of the cases even without providing the petitioner any opportunity of challenging the orders passed in Exts.P7, P10 & P11 applications. Learned counsel for the petitioner submitted that the petitioner had already applied for copies of the orders passed in the above said I.As. According to him those orders can be challenged in appropriate proceedings. But his apprehension is about disposal of the OPs even before such steps are taken.

5. Considering the issue agitated as mentioned as above we are of the opinion that the writ petition can be disposed of at the admission stage itself. Considering the relief proposed to be granted, we are of the opinion that

issuance of notice to the respondent can be dispensed with. It is conceded that the Family Court has already dismissed the interim applications, Exts.P7, P10 & P11. It will be left open to the petitioner to challenge those orders, if he is aggrieved in any manner. The relief sought for in this original petition has become infructuous since the Family Court has already disposed of those IAs. Therefore liberty can be reserved to the petitioner to challenge the orders dismissing the interim applications, if so advised.

6. Learned counsel for the petitioner submitted that unless passing of the final judgments in the OPs are restrained, for facilitating the petitioner to challenge the orders passed in the interim applications, the petitioner will be put to severe prejudice. We are of the considered opinion that a direction can be issued to the Family court to provide certified /carbon copies of the orders passed in Exts.P7, P0 & P11 and the pronouncement of the final judgment in the OPs can be directed to be kept in abeyance for a reasonable period, in order to facilitate the petitioner to challenge those orders.

7. Hence this writ petition is disposed of by directing the Family Court, Ernakulam to issue certified copy / carbon copy of the orders passed on Exts.P7, P10 & P11 IAs (I.A. No.2979/2015 in OP 127/2011, IA No.3385/2015 in OP 138/2011 & IA No.3384/2015 in OP2363/2010) to the petitioner, at the earliest possible, at any rate within a period of 5 days from the date of receipt of this judgment, on usual terms. Pronouncement of the judgments in OP Nos.2363/2010, 138/2011 & 127/2011 shall be kept in abeyance for a period of 2 weeks, if not already pronounced, in order to facilitate the petitioner to challenge the interim orders in appropriate proceedings.

Sd/-

C.K. ABDUL REHIM, JUDGE.

Sd/-

MARY JOSEPH, JUDGE.

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