

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

TUESDAY, THE 27TH DAY OF OCTOBER 2015/5TH KARTHIKA, 1937

OP (FC).No. 430 of 2015 (R)

AGAINST THE JUDGMENT IN OP 54/2015 of FAMILY COURT, OTTAPPALAM

PETITIONER(S)/RESPONDENT:

MUHAMMED KASIM, AGED 62 YEARS,
S/O.HAMSA, KALLUVETTUKUZHIYIL, CHUNANGAD AMSOM
OTTAPALAM TALUK.

BY ADV. SRI.L.RAJESH NARAYAN

RESPONDENT(S)/PETITIONER:

SAHIDA, AGED 55 YEARS
W/O.MUHAMMED KASIM, KALLUVETTUKUZHIYIL
CHUNANGAD AMSOM, OTTAPALAM TALUK-679 101.

THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION ON 27-10-
2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP (FC) .No. 430 of 2015 (R)

APPENDIX

PETITIONER(S) ' EXHIBITS

EXT.P1 : TRUE COPY OF THE PLAINT IN OP NO.54/2015 DATED 30-1-2015.

EXT.P2 : TRUE COPY OF IA NO.11/2015 DT 30-1-2015.

EXT.P3 : TRUE COPY OF THE APPLICATION IA NO.399/2015 IN IA.NO.111/15
IN OP.NO.54/2015 DT 5-5-2015.

EXT.P4 : TRUE COPY OF THE APPLICATION AS IA.NO.526/2015 DT 15-6-2015.

EXT.P5 : TRUE COPY OF THE COMMISSION REPORT DT 7-7-2015.

/TRUE COPY/

P.S. TO JUDGE.

s1.

C.K.Abdul Rehim & Mary Joseph, JJ.

=====

O.P.(FC)No.430 of 2015

=====

Dated this the 27th day of October, 2015.

JUDGMENT

Abdul Rehim, J.

1. In view of the report received from the Family Court, Ottapalam and in view of the order proposed to be passed in this original petition, we are of the opinion that issuance of notice to the respondent is not necessary. Hence notice to the respondent is dispensed with.
2. This original petition, invoking the supervisory jurisdiction vested on this court under Article 227 of the Constitution of India, is filed seeking direction to the Family Court, Ottapalam to hear and pass orders on I.A.No.399 of 2015 in I.A.No.111 of 2015 in O.P.No.54 of 2015, on an early basis.
3. The petitioner herein is the respondent in O.P.No.54 of 2015, which is instituted by the respondent herein, seeking for return of money,

gold ornaments, and claiming maintenance etc. Total valuation of the claims in the original petition is ₹13,40,000/-. The amount was sought to be realized by creating a charge over the plaint B schedule property. The Family Court had passed an order of interim attachment before judgment with respect to the plaint B schedule property. B schedule includes two items of properties. One is a property having an extent of 26 cents with a residential building contained therein and Item No.2 is a shop room with an area of 150 sq.ft. Case of the petitioner is that Item No.2 in the B schedule was already sold by the petitioner, even before the order of interim attachment, and the purchaser of the said property is having absolute ownership and enjoyment. Hence the petitioner submitted Ext.P3 application as I.A.No.399 of 2015 in I.A.No.111 of 2015 seeking for lifting of the attachment with respect to Item No.2 of B schedule property. It is contended before the court below that Item No.1 in the B schedule which contains a residential building would itself fetch

an amount of ₹90,00,000/-, which would be more than sufficient to secure the plaint claims. It is stated that the court below had failed to pass any order on Ext.P3 application. According to the petitioner, he will be put to severe prejudice if the said interim application is not considered and appropriate orders are not passed allowing lifting of the attachment with respect to Item No.2 in the B schedule property. Under such circumstances the petitioner is approaching this court seeking reliefs as mentioned above.

4. When the case came up for admission, this court directed the Registry to call for report from the Family Court, Ottapalam regarding the present stage of the interim application. In a report submitted to this court, dated 22.9.2015, it is informed that I.A.No.526 of 2015 filed by the petitioner herein seeking appointment of an Advocate Commissioner to conduct local inspection and to assess the market value of the petition schedule property, was already allowed and the Advocate Commissioner has

already filed a report on 7.7.2015. It is further mentioned that I.A.No.111 of 2015 filed seeking attachment of the B schedule property stands posted on 8.10.2015, for counter and hearing. The petitioner herein has not filed any counter in that petition so far, despite the fact that he had entered appearance on 16.2.2015. With respect to I.A.No.399 of 2015, which is filed seeking to lift the attachment with respect to one item of property, it is reported that the matter was heard in part and the said interim application also stands posted to 8.10.2015. It is not known with respect to the proceedings of the Family Court on 8.10.2015. However, the learned Judge of the Family Court had reported that I.A.No.399 of 2015 and I.A.No.111 of 2015 can be disposed of within a period of one month. We take note on record the undertaking made by the Family Court in this regard.

Therefore the above original petition is hereby disposed of by directing the Family Court to consider I.A.No.399 of 2015 filed in

I.A.No.111 of 2015 in O.P.No.54 of 2015, at the earliest possible, after affording reasonable opportunity of hearing to both sides. The applications shall be disposed of at the earliest, at any rate, within the period conceded in the report submitted to this court.

C.K.Abdul Rehim, Judge.

Mary Joseph, Judge.

sl.