

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 29TH DAY OF SEPTEMBER 2015/7TH ASWINA, 1937

OP (FC).No. 433 of 2015 (R)

ORDER IN IA.NO.1033/2015 IN OP.NO.309/2014 DT. 4.9.2015 OF THE FAMILY COURT, KOZHIKODE.

PETITIONER(S)/RESPONDENT:

MINI SEBASTIAN AGED 46 YEARS
W/O.SEBASTIAN, MACHUKUZHIL VEEDU, PO ARAMTHODE
KODANCHERY TALUK, KOZHIKODE, PIN-673 586.

BY ADVS.SRI.P.S.SREEDHARAN PILLAI
SRI.T.K.SANDEEP
SRI.ARJUN SREEDHAR
SRI.ARUN KRISHNA DHAN

RESPONDENT(S)/PETITIONER:

SEBASTIAN VARKEY, AGED 51 YEARS
S/O.GEORGE, MACHUKUZHIL VEEDU, PO ARAMTHODE
KODANCHERY TALUK, KOZHIKODE, PIN-673 586.

R-R BY ADV. SMT.REKHA NAIR
R-R BY ADV. SRI.V.K.BIJU

THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION ON 29-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP (FC).No. 433 of 2015 (R)

APPENDIX

PETITIONER(S)' EXHIBITS

P1 : A TRUE COPY OF THE PETITION IN OP.NO.309/2014 FILED BY THE RESPONDENT HEREIN BEFORE THE FAMILY COURT, KOZHIKODE DT 9-4-2014 FILED BY THE APPELLANT.

P2 : A TRUE COPY OF THE COUNTER STATEMENT IN OP.NO.309/2014 FILED BY THE PETITIONER HEREIN BEFORE THE FAMILY COURT, KOZHIKODE DT 9-1-2015 FILED BY THE APPELLANT.

P3 : A TRUE COPY OF THE PETITION IN OA.NO.354/2014 FILED BY THE RESPONDENT HEREIN BEFORE THE FAMILY COURT, KOZHIKODE DT 29-4-2014 FILED BY THE APPELLANT.

P4 : A TRUE COPY OF THE COUNTER STATEMENT IN OA.NO.354/2014 BEFORE THE FAMILY COURT, KOZHIKODE DT 9-1-2015 FILED BY THE APPELLANT.

P5 : A TRUE COPY OF THE PETITION IN IA.1033/2015 IN OP.NO.209/2014 BEFORE THE FAMILY COURT, KOZHIKODE DT 3-9-2015 FILED BY THE APPELLANT.

P6 : A TRUE COPY OF THE ORDER IN IA.1033/2015 INN OP.NO.309/2014 BEFORE THE FAMILY COURT, KOZHIKODE DT 3-9-2015 FILED BY THE APPELLANT.

RESPONDENT(S)' EXHIBITS

NIL

TRUE COPY

PS TO JUDGE

C.K.ABDUL REHIM & MARY JOSEPH, JJ.

OP(FC) No. 433 of 2015

Dated this the 29th day of September, 2015

JUDGMENT

Abdul Rehim,J.

The petitioner herein is the respondent before the Family Court , Kozhikode in 2 cases instituted by the respondent, as OP.No.309/2014 and OA.No.354/2015. The first case is filed under section 10 of the Divorce Act seeking dissolution of the marriage existing between the parties. The second case is filed seeking declaration of title with respect to certain immovable properties , which is allegedly purchased by utilising money spent by the respondent herein. The petitioner herein had filed an interim application IA.No.1033/2015 in OP.309/2014 seeking for joint trial of both the above said cases. According to the petitioner, evidence to be adduced and records to be produced in both the cases are one and the same. Therefore, unless a joint trial is conducted, it will cause prejudice to her, was the contention raised. But the Family Court had dismissed the

application observing that there was sufficient time available to the petitioner to take the pre-trial steps, but the petition was filed only when both the cases were posted for evidence. Finding that the interim application is meant only for delaying the cases, the IA was dismissed through Ext. P6 order. It is challenging Ext.P6 order that this OP is filed by invoking jurisdiction vested on this court under Article 227.

2. Heard; both sides. Evidently, both the cases pending before the Family Court arises out of the same matrimonial dispute. The parties in both the cases are one and the same. There is merit in the contention that the evidence to be adduced and the records to be produced may be more or less one and the same. It is appropriate to have a joint trial of both the cases in order to save the precious judicial time of the court, as well as to avoid any conflicting findings with respect to the factual matrix of the cases. It is true that the petitioner had not approached the Family Court in appropriate time, before commencement of the trial, when the cases were posted for pre-trial steps. But that by itself cannot be taken as a ground to reject the joint trial application. When interest of justice warrants, it is more

appropriate to have a joint trial of both the cases together. We also note that both the cases are now ripe for trial and that evidence can be proceeded without any further delay, on allowing joint trial.

3. Under the above mentioned circumstances the above OP(FC) is allowed and Ext.P6 order is hereby set aside. IA.No.1033/2015 in OP.No.309/2014 on the files of the Family Court, Kozhikode is hereby quashed. It is ordered that the Family Court will proceed with trial of OP.No.309/2014 and OA.354/2015 jointly.

4. Considering the fact that both the cases are now ripe for trial, the Family Court will take expeditious steps to dispose of the cases at the earliest possible.

C.K.ABDUL REHIM, JUDGE

MARY JOSEPH, JUDGE

Pmn/

