

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

WEDNESDAY, THE 7TH DAY OF OCTOBER 2015/15TH ASWINA, 1937

OP (FC).No. 471 of 2015 (R)

O.P.NO.1040 OF 2010 OF FAMILY COURT, THRISSUR

PETITIONER(S) :

- 1. JAYASREE, AGED 32 YEARS,
D/O.RAMAKRISHNAN, ERATT HOUSE, KAZHIMBRAM DESOM,
VALAPPAD VILLAGE, CHAVAKKAD TALUK, THRISSUR DISTRICT.**
- 2. RAJAYASREE, AGED 31 YEARS,
D/O.RAMAKRISHNAN, ERATT HOUSE, KAZHIMBRAM DESOM,
VALAPPAD VILLAGE, CHAVAKKAD TALUK, THRISSUR DISTRICT.**

**BY ADVS.SRI.K.S.BHARATHAN
SRI.B.C.MENON
SMT.S.ANJUSHA**

RESPONDENT(S) :

**RAMAKRISHNAN, AGED 75 YEARS,
S/O.CHEERANKUNHI, ERATT HOUSE, KAZHIMBRAM DESOM,
VALAPPAD VILLAGE, CHAVAKKAD TALUK,
THRISSUR DISTRICT- 680 001.**

**THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION
ON 07-10-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' EXHIBITS :

- EXHIBIT P1: TRUE COPY OF THE O.P.NO.1040/2010 DATED 18.06.2010.
- EXHIBIT P2: TRUE COPY OF THE AFFIDAVIT AND PETITION DATED 18.06.2010.
- EXHIBIT P3: TRUE COPY OF THE AFFIDAVIT AND PETITION DATED 28.08.2014.
- EXHIBIT P4: TRUE COPY OF THE COUNTER DATED 05.11.2014.
- EXHIBIT P5: TRUE COPY OF THE AFFIDAVIT AND PETITION DATED 18.02.2015.
- EXHIBIT P6: TRUE COPY OF THE LETTER DATED 04.06.2015 ALONG WITH
THE VALUATION CERTIFICATE.
- EXHIBIT P7: TRUE COPY OF THE AFFIDAVIT AND PETITION DATED 08.07.2015.
- EXHIBIT P8: TRUE COPY OF THE COUNTER DATED 13.07.2015.
- EXHIBIT P9: TRUE COPY OF THE ADDITIONAL COUNTER DATED 08.07.2015.
- EXHIBIT P10: TRUE TYPED COPY OF THE ORDER DATED 25.09.2015 IN
I.A.NO.4266/2014 IN O.P.NO.1040/2010 PASSED BY THE FAMILY
COURT, THRISSUR.
- EXHIBIT P11: TRUE COPY OF THE AFFIDAVIT AND PETITION DATED 26.09.2015.
- EXHIBIT P12: TRUE COPY OF THE REVIEW PETITION DATED 26.09.2015.
- EXHIBIT P13: TRUE COPY OF THE AFFIDAVIT AND PETITION DATED 26.09.2015.

RESPONDENT(S)' EXHIBITS :

NIL

//TRUE COPY//

P.S.TO JUDGE.

Msd.

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

OP(FC) No. 471 of 2015

Dated this the 7th day of October, 2015

JUDGMENT

Abdul Rehim,J.

The above original petition is filed seeking the following reliefs ;

i) direct the Family Court, Thrissur to dispose of Exts. P2 also along with Exts P11 to P13 on 8.10.2015 itself or within a time frame to be fixed by this Hon'ble Court.

ii) grant the interim order of injunction, injuncting the respondent from alienating, encumbering, creating third party interests and from committing any acts of waste in the property scheduled to Ext.P2 till the disposal of Exts. P2 and P11 to P13 by the Family Court, Thrissur.

ii) issue such other order or direction in the interest of justice as this Hon'ble Court may deem just and fit in the facts and circumstances of the case;

2. The petitioners are the petitioners in OP.No.1040/2010 on the file of the Family Court, Thrissur, which is instituted against the respondent herein seeking realisation of past maintenance, marriage expenses etc. Total claim in the petition

before the court below is valued at Rs.39,60,500/-. When the case was instituted the petitioners have also filed IA.No.4059/2010 (Ext. P2) seeking an interim injunction restraining the respondent from alienating or encumbering or committing waste with respect to certain immovable property scheduled thererunder. Subsequently the respondent herein filed IA.No.4266/2014 seeking a modification of the interim order of injunction, to the extent of restraining the order only with respect to one item of property. Another application as IA.No.756/2015 was also filed seeking orders for getting valuation of a building situated in one item of the scheduled property. The above applications were resisted by the petitioners through objections filed. But the court below had dismissed IA.No.4266/2014 filed by the respondent on 25.9.2015, observing that there was no order of interim injunction issued in IA.No.4059/2010. Since there was no order of injunction passed by the Family Court, the application filed seeking modification was found to be not maintainable.

3. After dismissal of IA.No.4266/2014 the petitioners herein filed Exts.P11 to P13 interim applications. In Ext.P11

(IA.No.4263/2015) various reliefs coming within the purview of section of 12,18 and 19 of the Protection of Woman from Domestic Violence Act. Ext.P12 is a review application filed seeking review of order passed by the Family Court in IA.No.4266/2014 on 25.9.2015. Ext.P13 is another interim application filed as IA.No.4264/2015 seeking direction to the respondent to maintain status quo with respect to the immovable properties, till the review petition is considered.

4. Contentions in this original petition that, unless Exts.P2, P11, P12 and P13 applications were not disposed of within a time frame to be stipulated by this court, irreparable injury will be caused to the petitioners. It is alleged that, after coming to know about the fact that there is no order of interim injunction, the respondent is taking hasty steps to alienate or to encumber the properties and also to get the petitioners evicted from the residential building situated therein. Learned counsel for the petitioners submitted that Exts.P11 to P13 interim applications are posted to 8.10.2015 . But it is submitted that he came to know from his counter part counsel appearing for the parties before the Family Court, that there may be no sitting of the

Family Court on 8.10.2015. Learned counsel also made an appeal to this court to direct the Family Court to consider Ext.P2 application (IA.No.4059/2010) along with Ext. P11 to P13 applications.

5. This court is of the considered opinion that the reliefs sought for cannot be granted in this original petition, which is filed invoking the supervisory jurisdiction vested on this court under Article 227. We do not find any error or illegality committed by the Family Court in dismissing IA.No.4266/2014, since the court found that there was no order of interim injunction granted by that court, which can be modified. Exts.P11 to P13 interim applications were filed only during the last week of September. Evidently, those applications are now posted for consideration before the Family Court on 8.10.2015. It will be left open to the petitioners to apprise the Family Court about the urgency of the matter involved in those interim applications and to seek consideration of those applications on a priority basis. Ext. P2 is an application filed as early as in the year 2010. Evidently the said application now stands posted along with the original petition to 27.11.2015. It will be also left

open to the petitioners to seek advancement of the posting of the said application, if so advised. At any rate, it is for the petitioners to approach the Family Court through appropriate motion for an urgent consideration of the interim applications. We are of the opinion that there exists no circumstance to presume that if such urgency is apprised before the Family Court, that court will not consider the same and will not take appropriate decision in the matter of early consideration of the interim applications.

6. Under the above mentioned circumstances the above original petition is hereby dismissed, subject to liberty reserved to the petitioners to move the Family court for urgent consideration of Exts. P2, P11, P12 and P13 applications.

7. Needless to observe that if any such motion is made, the Family Court will consider the same and take appropriate decision.

C.K.ABDUL REHIM, JUDGE

pmn/

MARY JOSEPH, JUDGE

