

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 24TH DAY OF NOVEMBER 2015/3RD AGRAHAYANA, 1937

OP (FC) .No. 472 of 2015 (R)

PETITIONER(S) :

SHAMEER,
AGED 37 YEARS, S/O.MUHAMMED,
ARAKKAL HOUSE, ANJANGADI,
KADAPPURAM (PO), CHAVAKKAD TALUK, THRISSUR DISTRICT.

BY ADV. SRI.JAMSHEED HAFIZ.

RESPONDENT(S) :

1. NOLOOFAR,
D/O.ABDULLAKUTTY, KUNHOOSAN MARAKKARAKATH,
NIRAMARUTHUR AMSOM DESOM, TIRUR (PO), TIRUR TALUK,
MALAPPURAM DISTRICT, PIN - 676 101.
2. JAMEELA,
W/O.MUHAMMED, ARAKKAL HOUSE, KADAPPURAM (PO),
CHAVAKKAD TALUK, THRISSUR DISTRICT - 680 514.

THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION ON 24-11-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rvs.

APPENDIX

PETITIONER(S) ' EXHIBITS :

EXT. P1:A TRUE COPY OF THE ORIGINAL PETITION IN OP.323/2015 BEFORE THE FAMILY COURT TIRUR DATED 09.06.2015.

EXT. P2:A TRUE COPY OF THE IA.996/2015 IN OP.NO.323/2015 BEFORE THE FAMILY COURT TIRUR DATED 09.06.2015.

EXT. P3:A TRUE COPY OF THE IA.NO.1211/2015 IN OP.323/2015 BEFORE THE FAMILY COURT TIRUR DATED 09.07.2015.

EXT. P4:A TRUE COPY OF THE COUNTR TO THE IA.NO.1211/2015 IN OP.323/2015 DATED 30.07.2015.

EXT. P5:A TRUE COPY OF THE COMMON ORDER IN IA.NO.1211/2015 AND IA.NO.996/2015 IN OP.NO.323/2015 BEFORE THE FAMILY COURT TIRUR DATED 19.08.2015.

RESPONDENT(S) ' EXHIBITS :

NIL.

/TRUE COPY/

P.A.TO JUDGE

rvs.

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

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O.P. (FC) No.472 of 2015

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Dated this the 24th day of November, 2015.

JUDGMENT

Abdul Rehim, J.

1. This original petition under Article 227 of the Constitution is filed challenging Ext.P5 order passed by the Family Court, Tirur in I.A.No.1211 of 2015 in I.A.No.996 of 2015 in O.P.No.323 of 2015. The 1st respondent herein is the wife of the petitioner. O.P.No.323 of 2015 was filed before the Family Court by the 1st respondent herein along with her two minor children, born out of the wedlock with the petitioner. The petitioner herein and the 2nd respondent are the respondents before the court below. The case was filed seeking for return of money, gold ornaments and for declaration to the effect that the 1st respondent is entitled to have

ownership over a Motor Car bearing Reg.No.KL-46 J 9292 (Maruti Wagon R car), on the basis that the said car was purchased by utilizing her funds. Along with the original petition the 1st respondent had filed I.A.No.996 of 2015 seeking for a temporary injunction restraining the petitioner from forcefully taking possession of the Motor Car, pending disposal of the case. The Family Court had granted an ad-interim injunction allowing the said prayer. Subsequently the petitioner filed I.A.No.1211 of 2015 seeking to vacate the order of interim injunction and to release the Motor Car to the petitioner. In the affidavit filed in support of the said application it is contended that, the Motor Car was purchased not with any funds belonging to the 1st respondent. It is pointed out that the vehicle stands registered in the name of the petitioner and despite that the 1st respondent is detaining the vehicle. It is contended that the

vehicle is required for the day-to-day use of the petitioner and that the petitioner has to renew its insurance policy and to do the requisite maintenances. Therefore it is contended that the vehicle need to be released to the petitioner. The 1st respondent had filed detailed objection to I.A.No.1211 of 2015. Considering the contentions on both side, the application was disposed of by the Family Court through Ext.P5 order. The court below found that, from the documents produced on behalf of the petitioner it is prima facie evident that the Motor Car was not purchased with money raised on selling the gold ornaments of the 1st respondent. But it is found that, the fact that the vehicle is left with custody of the 1st respondent would probablize her case that the vehicle has been given to her for her exclusive use by the petitioner. It is found that the documents like Registration Certificate, Insurance Certificate, Fitness Certificate etc. are in

the possession of the 1st respondent, who is regularly using the vehicle. The court observed that releasing of the vehicle under interim custody to the petitioner *pendente lite* may cause irreparable loss to the 1st respondent, because one of the reliefs sought for in the original petition is a declaration with respect to ownership of the car. Hence it is found that the petitioner is not entitled to get release of the vehicle till the final disposal of the original petition. It is aggrieved by the said decision, this original petition is filed.

- 2.Despite service of notice from this court the respondents have not chosen to enter appearance or contest the matter.
- 3.Learned counsel for the petitioner contended that the order passed by the Family Court entrusting possession of the vehicle with the 1st respondent till the disposal of the suit, will cause irreparable legal injuries and prejudices to the petitioner. It is

pointed out that, as long as the registered ownership and other documents of the vehicle stands in the name of the petitioner, there is every chance that he will be held liable for all the consequences which follow based on usage of the vehicle, for which a registered owner will be held liable under the provisions of the Motor Vehicles Act and under the Rules framed thereunder, including liability for compensating any loss or injury which may be caused to any third party. Therefore, leaving the vehicle in the custody of the 1st petitioner and allowing herself or her family members to use the vehicle which stands registered in the name of the petitioner, will be resulting in causing irreparable legal injuries to him, is the contention.

4. Learned counsel for the petitioner has made an offer on behalf of the petitioner to furnish security to the extent of the value of the vehicle in order to facilitate release of the vehicle to him

pendente lite and for permitting him to use the vehicle till the disposal of the suit. Even if it is found that the 1st respondent is entitled to have ownership over the vehicle, she can be adequately compensated by securing its value at the time of release of the vehicle to the petitioner, is the contention.

5. While considering the contentions raised on the basis of the undertaking made as above, we are of the opinion that the matter requires reconsideration at the hands of the Family Court. The aspects regarding usage and liability, which may be fetched on the petitioner, was not considered by the court below while passing the order impugned. *Prima facie*, we find merit in the contention regarding those aspects. Further, we are of the opinion that interest of the respondent can be protected by securing the value of the vehicle under deposit. Hence it is necessary to direct the Family Court to take a fresh decision in

the matter based on the above observations, if necessary after ascertaining value of the vehicle from any competent authority.

For the said purpose we are inclined to remit the matter.

6. Hence the above original petition is hereby allowed by quashing Ext.P5 order passed by the Family Court. The Family Court is directed to pass fresh orders on I.A.No.1211 of 2015, after affording opportunity of hearing to both sides, on taking note of the observations contained hereinabove. The application shall be disposed of afresh at the earliest possible, at any rate, within a period of one month from the date of receipt of a copy of this judgment.

C.K.Abdul Rehim, Judge.

Mary Joseph, Judge.

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