

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

MONDAY, THE 9TH DAY OF NOVEMBER 2015/18TH KARTHIKA, 1937

OP (FC).No. 495 of 2015 (R)

**(AGAINST THE ORDER DATED 07-10-2015 IN IA Nos.1503/2015, 1504/2015, 1505/2015
& 1506/2015 IN OP No.1699/2012 OF FAMILY COURT, KOTTAYAM AT ETTUMANOOR)**

PETITIONERS/PETITIONERS IN I.A. & RESPONDENT IN OP:

- 1. JIJU LUKOSE,
AGED 30 YEARS, S/O.GEORGE LUKOSE,
1300 WORCESTER RD, FRAMINGHAM, MA 01702 USA
HAVING NATIVE ADDRESS AT PLATHOTTAM HOUSE
ATHIRAMPUZHA P.O, KOTTAYAM 686 562
REPRESENTED BY FATHER AND P.A HOLDER GEORGE LUKOSE.**
- 2. GEORGE LUKOSE
S/O.LATE M.R.GEORGE, PLATHOTTAM HOUSE
ATHIRAMPUZHA P.O, KOTTAYAM 686 562.**

**BY ADVS.SRI.G.KRISHNAKUMAR
SMT. PRIYA PA**

RESPONDENT/RESPONDENT/PETITIONER:

**SNEHA JOSE
D/O.JOSE KURIAN, AGED 31,
VEMPENY HOUSE, VETTIMUKAL P.O
ETTUMANOOR, KOTTAYAM 686 631.**

BY ADV. SRI.E.M.MURUGAN

**THIS OP (FAMILY COURT) HAVING BEEN FINALLY HEARD ON 09-11-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

AMG

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1. COPY OF THE OP NO.1699/12 ON THE FILE OF FAMILY COURT, KOTTAYAM.
- EXHIBIT P2. COPY OF THE OBJECTION FILED BY THE PETITIONERS.
- EXHIBIT P3. COPY OF THE IA 1503/15 IN OP 1699/12 OF THE FAMILY COURT, KOTTAYAM.
- EXHIBIT P4. COPY OF THE IA 1504/2015 IN OP 1699/12 OF THE FAMILY COURT, KOTTAYAM.
- EXHIBIT P5. COPY OF THE LIST OF DOCUMENTS FILED IN EXHIBIT P1 OP 1699/12 ON THE FILE OF FAMILY COURT, KOTTAYAM.
- EXHIBIT P6. COPY OF THE IA 1505/15 IN OP 1699/12 OF THE FAMILY COURT, KOTTAYAM.
- EXHIBIT P7. COPY OF THE IA 1506/15 IN OP 1699/12 OF THE FAMILY COURT KOTTAYAM.
- EXHIBIT P8. COPY OF THE OBJECTION TO EXHIBIT P3 IA 1503/15 FILED BY THE RESPONDENT.
- EXHIBIT P9. COPY OF THE OBJECTION TO EXHIBIT P4 IA 1504/15 FILED BY THE RESPONDENT.
- EXHIBIT P10. COPY OF THE OBJECTION FILED IN IA 1505/15 IN OP 1699/12 ON THE FILE OF FAMILY COURT, KOTTAYAM.
- EXHIBIT P11. COPY OF THE OBJECTION FILED IN IA 1506/15 IN OP 1699/12 ON THE FILE OF FAMILY COURT, KOTTAYAM.
- EXHIBIT P12. COPY OF THE COMMON ORDER DATED 7.10.15 IN IA 1503/15 IA 1504/15 IA 1505/12 IA 1506/15 IN OP 1699/12 OF THE FAMILY COURT, KOTTAYAM.

RESPONDENTS' EXHIBITS

NIL

True copy

P.A. To Judge

AMG

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

O.P (FC) No. 495 OF 2015

DATED THIS THE 9th DAY OF NOVEMBER, 2015

J U D G M E N T

C.K. Abdul Rehim, J:

The petitioners herein, who are the respondents in OP No.1699/2012 instituted before the Family Court, Kottayam by the respondent herein, is approaching this court challenging Ext.P12 common order passed by the Family court in IA Nos.1503/2015, 1504/2015, 1505/2015 & 1506/2015. Challenge in this original petition is limited only against the orders passed in IA Nos.1503/2015 & 1504/2015.

2. The suit was instituted against the petitioners herein seeking for return of patrimony and value of gold ornaments amounting to Rs.33,25,000/-, which is alleged to have been entrusted with them and for a declaration of title over an immovable property having an extent of 50 cents along with building and sawmill contained therein. It is the claim of the respondent that her father had given 457 gms.

of gold ornaments worth Rs.12.50 lakhs and an amount of Rs.13.75 lakhs in cash and also a gold chain having 34 gms. worth Rs.65,000/-. It is also alleged that another some of Rs.5,00,000/- was paid by the father of the respondent to the petitioners. Hence the suit is filed seeking realization of a total amount of Rs.33,25,000/-.

3. One of the contentions raised by the petitioners herein before the court below is that, certain gold ornaments were entrusted by the respondent to the 2nd petitioner, to keep it the Bank Locker and a list of such gold ornaments entrusted was prepared by the petitioner on her own handwriting. According to the petitioners those ornaments are kept in the Bank Locker maintained with the South Indian Bank. The petitioners have filed IA No.1503/2015 (Ext.P3) seeking for appointment of an Advocate Commissioner to open the Bank Locker and to prepare an inventory of the ornaments and other documents kept in the locker, and also to take photographs of the ornaments kept. The petitioners have also filed Ext.P4, I.A. No.1504/2015 (Ext.P4) seeking to accept a 'list of

documents' annexed along with that I.A. Averments in the affidavit filed in support is that, the document produced along with I.A could not be filed on any earlier occasion, because a transfer petition seeking for transfer of the case from the Family Court, Kottayam was pending before this court. Therefore it is stated that delay in filing documents was not wilful and the documents need to be accepted in the case.

4. The court below considered the above said two interim applications along with two other petitions and dismissed them through the common order (Ext.P12) which is impugned in this original petition. Being aggrieved by dismissal of IA Nos.1503/2015 & 1504/2015, this original petition is filed by invoking the supervisory jurisdiction vested on this court, under Article 227 of the Constitution of India.

5. Evidently, the court below had considered circumstances prevailed in the petitioner prosecuting the case before the Family Court. It is observed that the petitioners have preferred innumerable number of I.As

before the court below, most of which are totally unnecessary or irrelevant. It is also blamed that the petitioners have approached this court seeking transfer of the case even by making baseless and defamatory allegations against the Family Court and subsequently the said transfer petition was withdrawn by the petitioners themselves. It is also pointed out that trial of the case has already started and the interim applications in question were filed only at a stage when the case was posted for recording evidence of the respondent herein. From the factual matrix revealed, we perfectly agree with the observations contained in the impugned order of the court below. But this court is of the considered opinion that, despite the existence of any such circumstances the present I.As need to be considered on its merits.

6. I.A No.1503/2015 was filed seeking for appointment of an Advocate Commissioner to open the Bank Locker and to make an inventory and to take photograph of the ornaments kept therein. In Ext.P2 written statement filed by the petitioners before the Family Court, it is

categorically stated that the respondent herself had put her gold ornaments in the Bank Locker and she herself had entrusted a list of the ornaments kept in the locker to the wife of the 2nd petitioner. According to the petitioners, all such ornaments are kept in safe custody and that the petitioners are ready to surrender the same before the Family court. In Ext.P3 application the request is for appointment of an Advocate Commissioner to make an inventory of the ornaments contained in the Bank Locker and to take photograph of the same. The court below while dealing with the petition observed that, despite filing of the original petition as early as in December, 2012, the petitioners have never filed any application before the court below seeking to open the Locker or to verify the ornaments and only at the fag end of the trial they are approaching with a prayer for opening the Locker. It is also evident that the Bank Manager was examined in the case and evidence given by him is to the effect that the Locker in question was operated on 03-12-2011 and 25-01-2012. Therefore the respondent contended that the ornaments might have been

removed by the petitioners herein. The court below therefore found that there is no meaning in opening the locker or in taking photograph of the ornaments. Under such circumstances the court below opined that filing of IA No.1503/2015 is without any bonafides and hence the interim application is dismissed.

7. Learned counsel appearing for the petitioners contended that it is the specific case of the petitioners that the respondent had kept her ornaments in the above said Bank Locker before she went to USA and that the said ornaments are kept safe in the Bank Locker itself. Evidently there is a dispute with respect to the quantity of ornaments alleged to have been entrusted with the petitioners. It is pointed out that, documents produced along with IA No.1504/2015 would indicate that the respondent had prepared a list of the ornaments in her own handwriting. She had also given statement with respect to the quantity of ornaments in a petition filed before this court as CrI. M.C. No.1719/2013. If there is any discrepancy with respect to details of the ornaments alleged to have been entrusted

with the petitioners, it will be left open to the petitioners prove the same in evidence. If the petitioners have got a case that ornaments belonging to the respondent are already in their custody, kept in the Bank Locker, it is for them to give details of such ornaments and to express willingness to give back the same. When the quantity and details of the ornaments are in dispute, there is no purpose in seeking for opening of the Bank Locker and preparing an inventory. It will be left open to the petitioners to adduce evidence before the court below with respect to the ornaments kept in Bank Locker, out of the list of ornaments claimed by the respondent. Hence this court is of the considered opinion that no purpose can be achieved by deputing an Advocate Commissioner to open the Bank Locker and to prepare an inventory and to take photographs of the ornaments.

8. With respect to I.A Nos.1504/2015, which is filed, seeking for acceptance of the list of documents, contention of the petitioners is that out of the 9 documents included in the list, 3 documents were already marked as confronted

with the respondent, during recording of evidence. The court below had gone into the details of each of the documents included in the list and evaluated its admissibility and evidencery value. It is ultimately found that out of 9 documents item Nos.6, 7, 9 & 10 alone need to be accepted. This court is of the opinion that the question of admissibility and evidencery value of each and every documents need not to be evaluated at the stage when those documents are produced before the court below. It is evident that, by virtue of the interim application the petitioners are seeking only for acceptance of the list of documents. Marking of any of such documents in evidence, its admissibility, and its evidencery value etc. are matters which can be agitated by the respondent at the time of recording evidence. The court below ought to have accepted the additional list of documents instead of evaluating its admissibility in evidence. This is especially because of provisions contained in Section 14 of the Family Courts Act, 1984, which enable the Family Court to receive any evidence, report, statement, documents, information or

matter, that may in its opinion assist the court to deal effectually with the dispute, despite whether such documents would otherwise relevant or admissible under the Indian Evidence Act, 1872.

9. Under the above mentioned circumstances, we are of the considered opinion that non-acceptance of all the documents included in the list, sought to be produced through Ext.P4 I.A., cannot be sustained. It is settled law that, in a trial of a suit the parties should be left open with maximum opportunity to adduce all best evidence available. Shutting down opportunity to any party to bring proper evidence or best evidence available with them, would defeat the interest of justice, because the court has to take a just and proper decision based on all available evidence.

10. Therefore, while declining interference with the dismissal of IA No.1503/2015, this court is inclined to allow IA No.1504/2015. In the result the above original petition is allowed in part. Exhibit P12 order is set aside to the extent it denied acceptance of all the documents produced along with the IA No.1504/2015. The Family Court is

directed to allow I.A. No.1504/2015 and to accept the additional documents produced. However, it is made clear that the question of marking any of the document produced in evidence, its admissibility, or its evidencery value would depend upon the relevancy of such documents and will depend upon the decision which will be taken by the Family Court during the trial and hearing of the case.

Sd/-

C.K. ABDUL REHIM, JUDGE.

Sd/-

MARY JOSEPH, JUDGE.

AMG

True copy

P.A. to Judge