

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM
&
THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

MONDAY, THE 30TH DAY OF NOVEMBER 2015/9TH AGRAHAYANA, 1937

OP (FC).No.502 of 2015 (R)

AGAINST THE JUDGMENT IN OP 359/2013 of FAMILY COURT,
PATHANAMTHITTA, DATED 19.10.2015

PETITIONER(S) :

1. SARADAMMA, AGED 65 YEARS,
MUKULAYYATHU VEEDU,
PAZHAKULAM KIZHAKKU MURI, PERINGANADU VILLAGE,
ADOOR TALUK.

2. BINU B PILLAI,
MUKULAYYATHU VEEDU,
PAZHAKULAM KIZHAKKU MURI, PERINGANADU VILLAGE,
ADOOR TALUK.

BY ADVS.SRI.N.N.SUGUNAPALAN (SR.)
SRI.S.SUJIN

RESPONDENT(S) :

1. SADASIVAN NAIR,
SRUTHIYIL VEEDU,
PAZHAKULAM KIZHAKKU MURI, PERINGANADU VILLAGE.

2. RESMI,
SRUTHIYIL VEEDU,
PAZHAKULAM KIZHAKKU MURI, PERINGANADU VILLAGE.

3. KARTHIKEYAN NAIR,
ROOM NO. 6, KAVITHA VIHAR, KANKAYAM PALAYAM,
COIMBATHOOR, TAMIL NADU.

4. RADHAKUTTY,
MOUTIYIL VEEDU, VETTOOR, PATHANAMTHITTA.

5. SAHADEVAN,
SARASWATHY NIVAS, CHOO LATHERUVU,
VANDIKAPPALLY PADINJARU.

6. AMAL (MINOR) ,
SRUTHIYIL VEEDU,
PAZHAKULAM KIZHAKKU MURI, PERINGANADU VILLAGE,
REPRESENTED BY ITS POWER OF ATTORNEY HOLDER SADASIVAN NAIR

BY ADVS.SRI.SHIJU VARGHESE
SRI.A.C.EAPEN

THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION ON
30-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

:2:

OP (FC).No. 502 of 2015 (R)

APPENDIX

PETITIONER(S) ' EXHIBITS:

EXT.P1: TRUE COPY OF THE SCHEDULE ON 6/10/15.

EXT.P2: TRUE COPY OF THE AFFIDAVIT DT. 14/10/15.

EXT.P3: TRUE CPY OF IA 1223/15.

EXT.P4: TRUE COPY OF THE ORDER DT. 19/10/15 IN IA 1223/15 IN OP 359/13
OF THE FAMILY COURT, PATHANMTHITTA.

RESPONDENT(S) ' EXHIBITS: NIL

//True Copy//

P.A. to Judge

SS

**C.K. ABDUL REHIM, J.
&
K. RAMAKRISHNAN, J.**

O.P.(F.C.) No. 502 of 2015

Dated this the 30th day of November, 2015

JUDGMENT

K. Ramakrishnan, J.

Petitioners in I.A.No.1233/2015 in O.P.No.359/2013 of Family Court, Pathanamthitta, have filed this application challenging Ext.P4 order passed by the Family Court under Article 227 of the constitution of India.

2. It is alleged in the petition that the petitioners are respondents in O.P.No.359/2013 on the file of the Family Court Pathanamthitta. First respondent herein was the husband of the first petitioner's daughter Bindu. After marriage while first respondent and Bindu along with their minor daughter were residing in Saudi Arabia, first petitioner received an information that her daughter and grand daughter died in a fire accident. The

conduct of the first respondent during the life with the petitioners' daughter was not good and after the death raised serious suspicion about the conduct of the first respondent that he was only interested in the ornaments and money of his wife Bindu. After the death of Bindu and the minor daughter, respondents have filed the above O.P. for partition of Bindu's right in the family property and first petitioner herein filed another O.P. before the Family Court for return of gold ornaments and money that was given at the time of marriage of her daughter and it was thereafter two O.Ps were filed by the first respondent to resist the claim of the petitioners. The evidence of the petitioners in the lower court was over and thereafter petitioners filed witness list. But the court allowed the same and summons was ordered, but witnesses could not appear. So the evidence was closed. Thereafter the petitioners filed I.A.No.1223/2015 to review the order, closing the evidence

and that petition was dismissed by the court below by Ext.P4 impugned order, which is being challenged by the petitioners.

3. Though notice to 3rd respondent was not served, the counsel appearing for the first respondent undertakes to take notice for all the respondents in the matter as the same counsel was representing them in the lower court and they can protect the interest of the 3rd respondent also. Considering the nature of dispute, we felt that the petition can be admitted and disposed of today itself, after hearing both sides.

4. The counsel for the petitioner submitted that, since one of the witness has to appear on summons, he did not appear and without his evidence they may not be able to prove the case. So examination of that witness is required.

5. On the other hand, the counsel for the respondent submitted that it is only a technique for

protracting the matter and they want only the case to be disposed of in a particular time frame, though this court has fixed time to dispose of the case, but on account of the adamant attitude of the petitioners herein, the case could not be disposed of.

6. It is seen from the impugned order that this court as earlier directed as per order in O.P.(F.C.) No.409/2014 to dispose of the case within four months from the order dated 29.10.2014 and both parties did not properly co-operate with disposal of the case within a time frame fixed by this court and that resulted in the family court seeking further extension of time and this court had extended the time till 29.12.2015. In spite of that, the parties did not adduce evidence, so the court below had appointed an Advocate Commissioner to record evidence as that court was only in charge of the family court, Pathanamthitta and the evidence of the petitioners was

over, though time was granted to adduce evidence on behalf of the respondents who are petitioners herein, they did not adduce any evidence, so the evidence was closed. It is seen from the order itself that, the petitioners have filed witness list and one of the witness shown is a Scientist attached to ISRO, Thiruvananthapuram and other witness is a political worker. Though summons was issued, the same was not served till date. However considering the circumstances, we feel that an opportunity has to be given to the petitioners to adduce evidence and shutting evidence to prove their case will only prejudicially affect their right to have a fair trial in the case. But at the same time, the conduct of the parties will have to taken note of as in spite of direction given by this court, they were not co-operating with the disposal of the case. Considering these aspects, this court feels that, the order passed by the court below can be set aside on condition that the petitioners shall

deposit ₹2,000/- as cost before the Kerala State Mediation and Conciliation Centre, within a period of one week from today. If they deposit the amount and produce the receipt for payment of the amount before the court below, then court below is directed to allow the application I.A.No.1223/2015 and give opportunity to the petitioners herein to adduce evidence. Petitioners are also directed to take earnest attempt to procure the witnesses and produce them before the court, if they are particular in getting those witnesses to prove their case within a reasonable time. However, the court below is directed to dispose of the case as expeditiously as possible at any rate within two months from the date allowing the application I.A.No.1223/2015, on complying with the direction given by this court. In spite of opportunity given, if the petitioners did not procure the witness and adduce evidence, within a reasonable time fixed by the Family Court, then court below is at liberty to

proceed with the case with the available evidence on record and dispose of the case within the time fixed by this court by this order. Parties are directed to appear before the court below on 09.12.2015.

With the above direction and observation the petition is disposed of. Office is directed to communicate this judgment to the court below immediately by fax.

Sd/-
C.K. ABDUL REHIM, JUDGE

Sd/-
K. RAMAKRISHNAN, JUDGE

//True Copy//

P.A. to Judge