

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 3RD DAY OF NOVEMBER 2015/12TH KARTHIKA, 1937

OP (FC).No. 508 of 2015 (R)

AGAINST THE JUDGMENT IN OP 422/2014 of FAMILY COURT, THIRUVALLA DATED
17.10.2015

PETITIONER(S) /PETITIONER:

LEELAMANIYAMMA AGED 63 YEARS
D/O.NARAYANA PILLAI, LAVANYA BHAVAN, THENGELI MURI
KUTTOOR P O, THIRUVALLA
PATHANAMTHITTA DISTRICT NOW R/A.SREEVALSAM
(KOLLAMPARAMBIL)VALANJAVAZHI, AMBALAPPUZHA, ALAPPUZHA

BY ADVS.SRI.D.SAJEEV
SMT.LIGEY ANTONY

RESPONDENT(S) /RESPONDENT:

AMBILY A.C.
ANIKALLIL, NJALBHAGOM MURI, KAVIYOOR VILLAGE
THIRUVALLA TALUK, PATHANAMTHITTA DISTRICT 689101

THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION ON
03-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP (FC).No. 508 of 2015 (R)

APPENDIX

PETITIONER(S) ' EXHIBITS

- EXT.P1:- TRUE COPY OF THE PLAINT IN OS NO 386/2008 ON THE FILE OF
MUNSIFF COURT, THIRUVALLA
- EXT.P2:- TRUE COPY OF THE WRITTEN STATEMENT FILED BY THE DEFENDANT IN
OS NO 386/2008 ON THE FILES OF THE MUNSIFF COURT, THIRUVALLA
- EXT.P3:- TRUE COPY OF THE ADDITIONAL WRITTEN STATEMENT FILED BY THE
DEFENDANT IN OS NO 386/2008 ON THE FILES OF THE MUNSIFF
COURT, THIRUVALLA
- EXT.P4:- TRUE COPY OF THE JUDGMENT DTD 18/8/2014 IN OS NO 386/2008 ON
THE FILE OF THE MUNSIFF COURT, THIRUVALLA
- EXT.P5:- TRUE COPY OF THE AFFIDAVIT AND PETITION FILED AS IA NO
629/2015 IN OP NO 422/104 ON THE FILE OF THE FAMILY COURT,
THIRUVALLA
- EXT.P6:- TRUE COPY OF OBJECTION FILED IN IA NO 629/2015 IN OP 422/104
ON THE FILE OF THE FAMILY COURT, THIRUVALLA
- EXT.P7:- TRUE COPY OF THE ORDER DTD 17/10/2015 IA NO 529/2015 IN OP
NO 422/2014 ON THE FILE OF THE FAMILY COURT , THIRUVALLA

RESPONDENT(S) ' EXHIBITS NIL

//TRUE COPY//

P.A TO JUDGE

vdv

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

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O.P(F.C) No.508 of 2015

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Dated this the 3rd day of November, 2015

JUDGMENT

Abdul Rehim, J.

The petitioner is approaching this court invoking the supervisory jurisdiction vested under Article 227 of the Constitution of India for challenging Ext.P7 order passed by the Family Court, Thiruvalla in I.A No.629 of 2015 in O.P No.422 of 2014, copy of which is produced as Ext.P7.

2. O.P No.422 of 2014 was originally instituted by the respondent herein before the Munsiff Court, Thiruvalla as O.S No.386 of 2008. The suit was filed seeking relief by way of a declaration. The suit was subsequently transferred by virtue of Ext.P4 judgment passed by the Munsiff Court, Thiruvalla on 18.08.2014. It is stated that the suit was transferred at a stage when the Munsiff Court, Thiruvalla had started trial and examined P.Ws 1 to 7 on behalf of the respondent herein, and D.Ws 1 to 3 on behalf of the petitioner herein. It is also pointed out that the suit was transferred at a stage after closing of the evidence and after

hearing final arguments of both side. After transfer of the case the petitioner herein filed an Interlocutory Application as I.A No.629 of 2015 before the Family Court seeking for admission of the evidence adduced in O.S No.386 of 2008 before the Munsiff Court, Thiruvalla. The said application filed as Ext.P5 was considered by the Family Court taking note of the objections filed by the respondent herein. On considering the relief sought for, the Family Court had dismissed the interim application through Ext.P7 order, observing that evidence already recorded by a court having no jurisdiction in the matter could not be admitted and that no decree can be passed on the basis of such evidence. It is aggrieved by Ext.P7 order, the petitioner approaching this court.

3. Heard; counsel appearing for the petitioner. On a perusal of Ext.P4 order of the Munsiff Court, Thiruvalla it is evident that the suit was not transferred by the said court to the Family Court, as contended by the petitioner. On the other hand, finding of the Munsiff Court is that the said court has no jurisdiction to decide the suit and hence the suit was returned for presentation before the proper court. Therefore, it is evident that, after taking evidence, the

Munsiff Court had realised that the said court is lacking jurisdiction to entertain the case. Therefore, the plaint was returned for presentation before proper court, by invoking Rule 10 and 10A of Order VII of the Code of Civil Procedure. The suit in question was instituted before the Munsiff Court after enactment of the Family Court's Act, 1984 and after establishment of the Family Court. Therefore it is rightly found by the Munsiff Court that the said court is lacking jurisdiction. By virtue of the provisions contained in the Family Court's Act, especially under Section 7 and 8 of the said Act, the jurisdiction was vested only with the Family Court. Hence it is to be found that the Family Court was right in rejecting the interim application seeking for acceptance of the evidence recorded by a court having no jurisdiction. Therefore, the reasons upon which the interim application was rejected by the Family Court, is legally sustainable.

4. Learned counsel for the petitioner had drawn attention of this court to the decision in *Kunhathutty v Meleveetil Kunhikoya and Others* (2015(4) KHC 342(DB)). It is held therein that even if the court has returned the plaint for presentation before the proper

court it can only be treated as a suit transferred under Section 8C of the Family Court Act and not an order returning the plaint under Order VII Rule 10A of the Code of Civil Procedure. But on the facts of the said case it is evident that a suit which was pending before the Sub Court, Tirur was transferred to the Family Court, on the establishment of the Family Court. Evidently it is a case instituted before enactment of the Family Court's Act and before establishment of the Family Court. Therefore, it is only a transfer made under Section 8C of the Family Court's Act. Under such context this court observed that, by virtue of Section 8C every suit or proceeding having the nature of one referred under Section 7(1) which is pending immediately before establishment of such Family Court before any other court, shall stand automatically transferred to the Family Court with effect from the date of establishment of the Family Court. Under such circumstances, even if the suit was returned for representation before the Family Court, instead of transferring the case, it can be considered as a transfer made by virtue of provisions contained in the Family Court Act. The situation has no bearing on the facts of the present case, because the suit

was instituted after enactment of the Family Court's Act and after establishment of the Family Court, before a court which is having no jurisdiction. Therefore the suit can be considered only as one instituted before a court having no jurisdiction. Hence whatever proceedings pursued before the said court can only be considered as proceedings conducted in a court having no jurisdiction in the matter, and it is only a nullity in the eye of law. Hence we are inclined to uphold the findings contained in the impugned order of the Family Court.

Consequently the original petition fails and the same is hereby dismissed.

Sd/-
C.K .ABDUL REHIM, JUDGE

Sd/-
MARY JOSEPH, JUDGE

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