

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 2ND DAY OF NOVEMBER 2015/11TH KARTHIKA, 1937

OP (FC).No. 510 of 2015 (R)

AGAINST THE JUDGMENT IN OP 314/2013 of FAMILY COURT, CHAVARA

PETITIONER(S) :

ANILKUMAR AGED 45 YEARS
S/O.GOPALAKRISHNAN WARIER
MULLETHU PADINJARE VARIYAM VEEDU
AYIKKATTU MOOLA MURIYIL, CHINGOLI VILLAGE
KARTHIKKAPPALLY TALUK, ALAPPUZHA DISTRICT.

BY ADVS.SRI.K.SHAJ
SRI.SAJJU.S
SRI.RENJIT GEORGE
SMT.ANJU MOHAN
SRI.S.VISHNU (ARIKKATTIL)

RESPONDENT(S) :

TREESA
D/O.MAGI, MAGI NIAVAS, THEKKUMBHAGOM MURI
THEKKUMBHAGOM VILLAGE, KOLLAM DISTRICT-691 004.

THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION ON 02-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP (FC).No. 510 of 2015 (R)

APPENDIX

PETITIONER(S) ' EXHIBITS

EXT.P1:THE TRUE COPY OF THE PETITION IN OP.NO.314/2013 ON THE FILE OF
THE FAMILY COURT, CHAVARA.

EXT.P2:THE TRUE COPY OF THE OBJECTION FILED BY THE PETITIONER HEREIN
O.P.NO.314/2013 ON THE FILE OF THE FAMILY COURT,CHAVARA.

EXT.P3:THE TRUE COPY OF THE IMPEADING PETITION FILED AS IA.416/2014 IN
OP.NO.314/2013.

EXT.P4:THE TRUE COPY OF THE OBJECTION FILED BY THE PETITIONER HEREIN IN
IA.416/2014 IN OP.NO.314/2013 ON THE FILE OF THE FAMILY COURT, CHAVARA.

EXT.P5:THE TRUE COPY OF THE ORDER DATED 08.01.2014 IN O.P.NO.314/2013
ON THE FILE OF THE FAMILY COURT, CHAVARA.

/TRUE COPY/

P.S. TO JUDGE.

s1.

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

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O.P.(FC) No.510 of 2015

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Dated this the 2nd day of November, 2015.

JUDGMENT

Abdul Rehim, J.

1. This original petition under Article 227 of the Constitution of India is filed seeking to set aside Ext.P5 order passed by the Family Court in I.A.No.416 of 2014 in O.P.No.314 of 2013. Case before the Family Court was instituted by the respondent herein, on the premise that she is the wife of the petitioner and a minor child was born out of the wedlock. The respondent is seeking relief for return of gold ornaments and money in the suit. The petitioner entered appearance before the Family Court and filed detailed objection disputing the existence of any legally valid marriage with the respondent and also disputing the allegation of mis-appropriation of any money or gold ornaments. Subsequently, the respondent herein filed I.A.No.416 of

2014 for impleading a lady by name Smt.Nirmala, alleging that she is the 2nd wife of the petitioner and that the petitioner had purchased immovable properties in the name of her by utilizing amounts belonging to the respondent. Eventhough the petitioner filed detailed objections against the impleading application, the Family Court had allowed the prayer through Ext.P5 order, observing that, considering the averments in the petition and the documents produced, the court is of the view that it is just and proper to implead the person proposed for arriving at a just decision of the case. It is aggrieved by Ext.P5, this original petition is filed.

2. Learned counsel for the petitioner contended that the person sought to be impleaded is a total stranger and is an unnecessary party to be impleaded, as far as the subject-matter of the litigation is concerned. The court below had allowed the impleading application without properly considering the objections, is the contention.
3. The affidavit filed in support of I.A.No.416 of 2014 is produced as

Ext.P3. On a perusal of the affidavit it is evident that the allegation raised by the respondent is that, in order to defeat the interest of the respondent and her son, the petitioner had purchased properties in the name of the lady sought to be impleaded. It is also alleged that the properties were purchased in her name by utilizing amounts which could have been spent by the petitioner for the benefit of the respondent and her son. According to her, such transactions were made by the petitioner only with a motive to defeat a decree which may be passed against him. Learned counsel for the petitioner contended that the documents produced in support of the said application would indicate that the transferor of the properties mentioned therein are not the petitioner. On the other hand, it is evident that the properties are purchased by the person sought to be impleaded from various others, that too before filing of the original petition. It is also contended that no specific relief is seen sought for against the additional respondent sought to be impleaded and as such

she is totally unnecessary party to the litigation.

4. First of all, we notice that the person allowed to be impleaded has not approached this court raising any grievance. If she is a totally unnecessary party to be impleaded in the litigation, it is left to her to approach the Family Court and to raise objection or to file written statement. If it is proved that she was impleaded without any reason which could be established, she can seek appropriate relief for compensating her grievance. On a perusal of the objections filed to I.A.No.416 of 2014, we are of the opinion that those contentions are factual disputes which can be raised by the petitioner as well as by the additional respondent impleaded, at the time when the case is proceeded before the Family Court. As such, we do not find any illegality or impropriety in allowing the impleading application, especially when the person impleaded has not raised any grievance.
5. However, we notice that the observations contained in Ext.P5 are based only on the allegations raised in the impleading application

and none of such observations can be taken as a finding of the court below. It will be always left open to the parties to contest the matter on all available grounds.

6. Under the above mentioned circumstances, we do not find any reason to interfere with Ext.P5, that too by invoking the supervisory jurisdiction vested on this court. Hence the original petition fails and the same is hereby dismissed.

C.K.Abdul Rehim, Judge.

Mary Joseph, Judge.

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