

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRA

WEDNESDAY, THE 25TH DAY OF NOVEMBER 2015/4TH AGRAHAYANA, 1937

OP (FC) .No. 538 of 2015 (R)

AGAINST THE ORDERS IN I.A. NOS. 1751 AND 1752 IN OP 496/2013 of FAMILY
COURT, ERNAKULAM DATED 29.09.2015

PETITIONER(S) :

MUNEEBA SHAMSUDEEN, AGED 28 YEARS
D/O.SHAMSUDEEN ALI, 37/2790 A, CHIRAKUZHY HOUSE
KARUKAPPALLY JUNCTION, DESABHIMANI ROAD, KALOOR
COCHIN-17

BY ADVS.SRI.BABU KARUKAPADATH
SMT.M.A.VAHEEDA BABU
SRI.P.U.VINOD KUMAR
SRI.KANDAMPULLY RAHUL
SRI.MITHUN BABY JOHN
SRI.J.RAMKUMAR

RESPONDENT(S) :

1. MUHAMMED SAFEER, AGED 30 YEARS
S/O.A.K.SALIM, RESIDING AT 1/121C, ELENJIKAYIL HOUSE
PATTIPPARA, PONJASSERI PO, PERUMBAVUR.

2. A.K.SALIM, AGED 63 YEARS
S/O.A.A.KOCHUNNI
RESIDING AT 1/121C, ELENJIKAYIL HOUSE, PATTIPPARA
PONJASSERI PO, PERUMBAVUR.

3. ASMA SALIM, AGED 54 YEARS
W/O.A.K.SALIM, RESIDING AT 1/121 C, ELENJIKAYIL HOUSE
PATTIPPARA, PONJASSERI PO, PERUMBAVUR.

THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION ON 25-11-
2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP (FC).No. 538 of 2015 (R)

APPENDIX

PETITIONER(S)' EXHIBITS

P1 : A TRUE COPY OF THE OP NO.496/2013 FILED BY THE PETITIONER BEFORE THE HON'BLE FAMILY COURT.

P1(A) : A TRUE COPY OF THE COUNTER AFFIDAVIT FILED BY THE RESPONDENTS IN OP NO.496/2013 ON THE FILE OF THE HON'BLE FAMILY COURT.

P2 : A TRUE COPY OF THE ATTACHMENT PETITION IA NO.829/2013 IN OP.NO.496/2013 ON THE FILE OF THE HON'BLE FAMILY COURT.

P3 : A TRUE COPY OF THE ATTACHMENT PETITION-IA NO.1751/2015 IN OP.NO.496/2013 ON THE FILE OF THE HON'BLE FAMILY COURT ALONG WITH THE ATTACHMENT SCHEDULE.

P3(A) : A TRUE COPY OF OBJECTION FILED BY THE RESPONDENTS IN IA.NO.1751/2015 IN OP.NO.496/2013 ON THE FILE OF THE HON'BLE FAMILY COURT.

P4 : A TRUE COPY OF THE AMENDMENT PETITION IA NO.1752/2015 IN OP.NO.496/2013 ON THE FILE OF THE HON'BLE FAMILY COURT.

P4(A) : A TRUE COPY OF OBJECTION FILED BY THE RESPONDENTS IN IA.NO.1752/2015 IN OP.NO.496/2013 ON THE FILE OF THE HON'BLE FAMILY COURT.

P5 : A TRUE COPY OF THE ORDER DT 29-9-2015 IN IA.NO.1751/2015 (ATTACHMENT PETITION) IN OP.NO.496/2013 OF THE HON'BLE FAMILY COURT, ERNAKULAM.

P6 : A TRUE COPY OF THE ORDER DT 29-9-2015 IN IA.NO.1752/2015 (AMENDMENT PETITION) IN OP.NO.496/2013 OF THE HON'BLE FAMILY COURT, ERNAKULAM.

RESPONDENT(S)' EXHIBITS : NIL

/TRUE COPY/

P.A. TO JUDGE

P.R. RAMACHANDRA MENON

&

ANIL K. NARENDRA, JJ.

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O.P. (F.C.) No. 538 of 2015

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Dated, this the 25th day of November, 2015

JUDGMENT

Ramachandra Menon, J.

The grievance of the petitioner is in respect of Exts. P5 and P6 orders passed by the Family Court in I.A. Nos. 1751 and 1752 of 2015 in O.P. No. 496 of 2013 respectively, whereby the prayer for attachment of additional property belonging to the first respondent has been declined simultaneously declining the relief with regard to the amendment sought for, vide Ext. P4.

2. The case projected by the petitioner is that O.P. No. 496 of 2013 filed by the petitioner is pending before the Family Court, Ernakulam for realization of the cost of gold ornaments and car, stated as owned by the petitioner and appropriated by the respondents concerned. It is stated that at the time of filing the original petition, the only property available to the first respondent was sought to be attached, which was allowed as per order dated 12.04.2013 in I.A. No. 829 of 2013. While so, there was an

attempt to have an amicable settlement with the intervention of the uncle of the petitioner and a 'settlement agreement' was executed on 21.05.2013 fixing the total value payable to the petitioner as Rs.65,00,000/-. Subsequently, it came to the notice of the petitioner that the first respondent had purchased some other property. Contending that the land value of the property already attached was not sufficient enough to meet the liability, the second item of the property was also sought to be proceeded against by filing Ext. P3 application in this regard. Simultaneously, the petitioner filed Ext. P4 petition for amendment, to bring the subsequent events to the notice of the Court. Objection was filed by the first respondent to both the applications. But both the I.A.s were dismissed by the Tribunal, vide Exts. P5 and P6 orders, which are under challenge in this original petition.

3. Despite completion of service of notice, there is no appearance on behalf of the respondents.

4. Heard the learned counsel for the petitioner in detail, who submits that Ext. P3 petition for causing attachment of the second item of the property was declined by the Court below making a wrong observation that there was no pleading in the petition, that

the land value of the property already attached was not adequate enough to satisfy the claim. Specific reference is made to paragraphs 5 and 6 of the affidavit in support of the said application. The above paragraphs, for convenience of reference, are reproduced below :

"5. In the above case, as per order dated 12.04.2013 this Hon'ble Court has attached an item of property of the respondents. The said property is having only a very low value and it will not be sufficient to satisfy even a portion of the decree that may be passed in my favour in the above O.P. It is understood that, the respondents, by selling my gold ornaments, car, etc has purchased another property, schedule of which is produced along with this petition. It is submitted that, even the market value of the said property along with the property already attached will not be even sufficient to satisfy the decree that is likely to be passed by this Hon'ble Court in this O.P.

6. It is submitted that, the property already attached will fetch only a small amount. The sale of the said property will not be sufficient to clear the entire amount that may be decreed by this Hon'ble Court in the above OP.

5. We have gone through the materials on record, including the nature of objections raised by the first respondent. After hearing, we find that the petitioner having raised a specific plea in this regard, as discernible from paragraphs 5 and 6 of the affidavit filed in support of the application, it was quite wrong for the Family Court to have observed that no such pleadings were ever raised by the petitioner. In other words, Ext. P5 order passed by the Family Court is not liable to be sustained, as it is based on the misconceived facts, which hence requires to be reconsidered.

6. Coming to the nature of relief sought for, for causing the amendment of Ext. P3 petition, the case of the petitioner, as put forth by the learned counsel, is that the petitioner was never a party to the agreement executed between the uncle of the petitioner and the respondents concerned. The case of the petitioner is that she is not bound by the said compromise or settlement and it is in the said circumstances that the amendment is sought to be made. The issue has been considered by the Family Court who has observed in Ext. P6 that, this subsequent development does not require any amendment and that the same could be brought in as part of evidence. Even otherwise, if the

O.P. (F.C.) No. 538 of 2015

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petitioner was not party to the so called agreement, whether such agreement is having any binding effect on the petitioner, is a matter to be considered by the Family Court at the relevant time. We do not find any reason to interfere with Ext.P6 .

In the above circumstances, Ext. P5 order passed by the Family Court is set aside and Ext. P3 application is directed to be reconsidered, of course, in accordance with law, after hearing both the sides.

O.P. stands disposed of.

sd/-

**P. R. RAMACHANDRA MENON,
JUDGE**

sd/-

**ANIL K. NARENDRA,
JUDGE**

kmd