

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

WEDNESDAY, THE 2ND DAY OF DECEMBER 2015/11TH AGRAHAYANA, 1937

OP (FC).No. 554 of 2015 (R)

PETITIONERS:

- 1. SAJU JOSEPH,
AGED 43 YEARS, S/O.P M JOSEPH, PAINUTHARA HOSUE
ST JOSEPH'S CHURCH ROAD, K P VALLON ROAD
KADAVANTHARA P O, KOCHI-682020**
- 2. MARY JOSEPH
W/O.P M JOSPEH, PAINUTHARA HOUSE,
ST JOSEPH'S CHURCH ROAD, K P VALLON ROAD
KADAVANTHARA P O, KOCHI-682020.**

**BY ADVS.SRI.K.RAMAKUMAR (SR.)
SRI.S.M.PRASANTH
SMT.ASHA BABU
SRI.G.RENJITH
SMT.ASWINI SANKAR R.S
SMT.S.PARVATHI
SRI.ARUNBABY STEPHEN**

RESPONDENT:

**MS SOBHA SAJU
D/O. T O JOSEPH, THERUVAMKUNNEL HOUSE
THATTARATHATTA P O, KARIMKUNNAM, THODUPUZHA
IDUKKI DISTRICT-685586**

THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION ON 02-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

AMG

APPENDIX

PETITIONERS EXHIBITS

- P1:- TRUE COPY OF O P NO 2143 OF 2015 FILED BY THE RESPONDENT BEFORE THE FAMILY COURT, ERNAKULAM.**
- P2:- TRUE COPY OF IA NO 4361/2015 IN OP NO 2143/2015 ON THE FILE OF THE FAMILY COURT, ERNAKULAM.**
- P3:- TRUE COPY OF IA NO 4362/2015 IN OP NO 2143 OF 2015 ON THE FILE OF THE FAMILY COURT ERNAKULAM.**
- P4:- TRUE COPY OF ORDER IN IA NO 4361/2015 IN OP 2143 OF 2015 ON THE FILE OF THE FAMILY COURT, ERNAKULAM.**
- P5:- TRUE COPY OF ORDER IN IA NO 4362/2015 IN OP NO 2143/2015 ON THE FILE OF THE FAMILY COURT ERNAKULAM.**

RESPONDENTS' EXHIBITS

NIL

True copy

P.A. To Judge

AMG

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

O.P (FC) No. 554 OF 2015

DATED THIS THE 2nd DAY OF DECEMBER, 2015

J U D G M E N T

C.K. Abdul Rehim, J:

The respondents in OP No.2143/2015 on the file of Family Court, Ernakulam are the petitioners herein. The respondent herein is the petitioner before the court below. The relief sought for in this original petition is to declare that the Family Court has no jurisdiction to entertain the original petition and for restraining the Family Court from proceeding further with the original petition on the basis of the lack of jurisdiction.

2. The original petition before the court below was instituted by the respondent herein seeking for a permanent prohibitory injunction restraining the petitioners herein from interfering with the peaceful possession and enjoyment of the business activity conducted by her and from forcefully evicting her from the matrimonial home. A further relief to pass an order of protection in favour of the

respondent by prohibiting the petitioners from committing, aiding or abetting commission of any domestic violence under Section 18 of the Protection of Women from Domestic Violence Act, 2005 is also sought for, along with a claim for payment of Rs.25,00,000/- towards compensation.

3. Along with the suit the respondent had also filed an interim injunction application as per Ext.P2 seeking temporary injunction against the petitioners for restraining them from evicting the respondent and her 3 children from the matrimonial home. Exhibit P3 is yet another interim application for injunction filed seeking to restrain the petitioners from entering into the premises of the business unit named, St. Joseph Electrical Retail Shop situated on the ground floor of a double storied building. The court below had passed Exts.P4 & P5 interim orders in the above said applications in I.A. Nos.4361/2015 & 4362/2015. In Ext.P4 the petitioners were restrained through an interim injunction from evicting the respondent and her 3 children from the matrimonial home. In Ext.P5 the petitioners were restrained through an order of temporary injunction from

entering into the business place of the respondent named, St. Joseph Electrical Retail Shop. Contention of the petitioners herein is that Exts.P4 & P5 orders are issued totally without jurisdiction and the original petition itself is not maintainable before the Family Court.

4. Contention of the petitioners herein is mainly that, the reliefs coming within the purview of the Protection of Women from Domestic Violence Act, which are included in the original petition, will take away the jurisdiction of the Family Court in entertaining the matter. This court takes note of the fact that, basically the original petition is instituted seeking for a permanent prohibitory injunction. It is a relief which will fall squarely within explanation (c) & (d) of Section 7 (1) of the Family Courts Act. Therefore the Family Court is vested with jurisdiction to entertain the suit (original petition). Question arises as to whether any incidental relief coming within the purview of Protection of Women from Domestic Violence Act can be sought for in a case instituted before the Family Court. Section 26 of the Protection of Women from Domestic Violence Act provides

that, any relief available under Section 18, 19, 20, 21 & 22 can also be sought in any legal proceedings before any Civil Court or a Family Court, if such a relief is with respect to a grievance affecting the aggrieved person and the respondent, despite the fact whether such proceedings is initiated before or after commencement of the Protection of Women from Domestic Violence Act. However, if the petitioners have any dispute regarding maintainability of the original petition before the Family Court for the reason as agitated herein, it is for them to raise such a question before that court itself. There is no justification or reason in approaching this court by invoking the supervisory jurisdiction vested under Article 227, seeking for a declaration to the effect that the Family Court has no jurisdiction to entertain the original petition. Hence this court is of the considered opinion that relief sought for cannot be granted in this original petition.

5. Shri. K. Ramakumar, learned Senior Counsel appearing for the petitioner contended that, by virtue of Ext.P4 interim order 3 children of the 1st petitioner and

respondent herein are now prevented from entering the matrimonial house and they are also prevented from pursuing their studies, because the Books, uniform and other articles are kept in the said house. It is contended that the children are at present in the custody of the 1st petitioner, as entrusted by the Child Welfare Committee. Because of the attitude adopted by the respondent in preventing them from entering the matrimonial home and from collecting their articles, the children are put to prejudice, is the contention. This court takes note of the fact that the children are not parties in the proceedings before the Family Court. There is no interim order passed by the Family Court prohibiting the children from entering the matrimonial home. On the other hand, the relief granted under Ext.P5 is to the effect of restraining the petitioners herein from evicting the children from the matrimonial home. We notice that Ext.P4 is only an ad-interim order, presumably issued at the time when the original petition was moved before the said court. If any clarification or modification is required with respect to the interim order

for preserving the liberty to the children to enter the matrimonial home, it will be left open to the petitioners to file appropriate application or objections before the Family Court and to seek such relief. Needless to observe that if any such approach is made the Family Court shall consider the same and shall pass appropriate orders without any further delay.

6. It is made clear that, if any question regarding maintainability is raised before the Family Court, the Family Court shall consider the same untrammelled by any of the observations contained herein.

Sd/-
C.K. ABDUL REHIM, JUDGE.

Sd/-
MARY JOSEPH, JUDGE.

AMG

True copy

P.A. to Judge