IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE V.K.MOHANAN
&
THE HONOURABLE MR. JUSTICE P.D.RAJAN

WEDNESDAY, THE 14TH DAY OF JANUARY 2015/24TH POUSHA, 1936

OP (FC).No. 63 of 2014 (R)

PETITIONER/PETITIONER:

KAMALA KAIMAL AGED 68 YEARS
W/O KAIMAL, RESIDING AT 10D, J.M.TOWERS
PALLIKKAVU TEMPLE ROAD, VADUTHALA
CHERANELLOOR VILLAGE, KANAYANNUR TALUK
ERNAKULAM DISTRICT.

BY ADV. SRI.P.M.ZIRAJ

RESPONDENT/RESPONDENT:

KAIMAL A.V., AGED 83 YEARS
S/O.P.KRISHNA KURUP, SUVARNA, KALPAKA APARTMENTS
A2, KARAMA ROAD, ELAMAKKARA
KOCHI - 26.

R1. BY ADV. SRI.R.SUDHISH
R. BY ADV. SMT.M.MANJU
BY GP SMT KOCHUMOL KODUVATH

THIS OP (FAMILY COURT) HAVING BEEN FINALLY HEARD ON 14-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP (FC).No. 63 of 2014 (R)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1 : TRUE COPY OF THE O.P.NO2076 ON THE FILE OFTHE FAMILY COURT, ERNAKULAM
EXHIBIT P2 : TRUE COPY OF THE COMMISSION REPORT SUBMITTED BY THE ADVOCATE COMMISSIONER DATED 21.01.2013 IN O.P.NO.2076 OF 2012 ON THE FILE OF THE FAMILY COURT, ERNAKULAM
EXHIBIT P3 : TRUE COPY OF THE OBJECTION DATED 13.01.2013 IN OP NO.2076 OF 2012 SUBMITTED BY THE RESPONDENT
EXHIBIT P4 : TRUE COPY OF THE ABOVE O.P.NO.125 OF 2013 ON THE FILE OF FAMILY COURT, ERNAKULAM SUBMITTED BY THE RESPONDENT HEREIN
EXHIBIT P5 : TRUE COPY OF THE I.A.NO.201 OF 2013 IN O.P.NO.125 OF 2013 ON THE FILE OF THE FAMILY COURT, ERNAKULAM
EXHIBIT P6 : TRUE COPY OF THE OBJECTION DATED 13.11.2013 IN O.P.NO.125 OF 2013 SUBMITTED BY THE PETITIONER BEFORE THE FAMILY COURT, ERNAKULAM
EXHIBIT P7 : TRUE COPY OF THE ORDER OF THE FAMILY COURT, ERNAKULAM DATED 24.01.2014 IN I.A.NO.3237 OF 2012 IN O.P.NO.2076 OF 2012

RESPONDENT(S)' EXHIBITS : NIL

//TRUE COPY//

PS TO JUDGE

V.K.MOHANAN & P.D.RAJAN, JJ

.....

OP(FC) No.63 of 2014

.....

Dated 14th January, 2015

JUDGMENT

P.D.RAJAN, J

This original petition is filed under Article 226 of the Constitution of India to issue a direction to call for records leading to Ext.P7 and quash the same on the ground that it is illegal. Petitioner and respondent are wife and husband. Their marriage was solemnised on 30.6.1961 as per the Hindu Customary rites. At the time of marriage, the respondent was working at TATA STEEL, who was drawing a salary of Rs.4000/- per month and he retired from service in the year 1989. At the time of marriage, no share or articles were given to the respondent by the petitioner. While residing together, the relationship between the husband and wife became strained and after 20 years of marriage, they became separated. Two children were born in the wed lock. Petitioner is residing with the younger son and respondent is residing with the elder son. Petitioner contended that

she is the absolute owner of the property having an extent of 6.7 ares, where she constructed a residential building which is numbered as 43/2535 of Cochin Corporation situated in survey No.98/3 of Thrikkanavattom Desom of Ernakulam Village. Actually the property was owned by the mother of the petitioner and after her death, it devolved upon her, where she constructed the above building with the help of her brothers and sisters by pledging and selling her gold ornaments. The respondent has no right or interest in the above property and building. When the marital relationship got strained, petitioner filed O.P.No.2076 of 2012 before Family Court, Ernakulam in which she filed I.A.3237 of 2012 for issuing a temporary injunction or restraining the respondent or his agent from trespassing and committing any waste therein.

2. Respondent appeared in the Family Court and resisted the above contention. Family Court granted an interim injunction and subsequently it was lifted and respondent was permitted to take shelter in the house.

He was also directed to occupy one room and the kitchen with the facilities of water and electric connection in the ground floor. But he or his agents or any men under him, shall not commit any waste to the building, property, or any other facilities available in the house he can just use and enjoy it, for his own living there. He was at liberty to engage one person as his assistant, for his existence therein at his own expenses, if necessary. Petitioner was also at liberty to rent out the remaining portion of the building, if required. It was also made clear that the respondent shall not interfere, in case the rentee are willing to make use of the water and electric facilities and also to share the kitchen, if such a situation arises. Aggrieved by the above order, petitioner wife preferred this O.P.

3. We heard the learned counsel for both sides. We have also perused Ext.P7 order issued by the Family Court, Ernakulam. It is admitted by the petitioner that respondent is her husband and that she is residing with her younger son and respondent is residing with her elder

son. The property devolved upon the petitioner and the building therein was constructed by the petitioner alone. According to the petitioner, the building was constructed by using her own funds and there was no contribution from the side of the respondent. Now, the dispute is pending in the Family Court and hence a direction contrary to Ext.P7 order will not be warranted at this stage. Both the parties in this case are senior citizens. It is difficult for the respondent to reside with the petitioner, who is also a senior citizen. Even though it is contended that the order passed by the Family Court is not according to the correct report furnished by the Commissioner, we are of the view that since final adjudication is pending, it is the Family Court to decide the matter according to law. Learned counsel for the petitioner contended that the conduct of the respondent is of destructive nature and Ext.P7 order is to be set aside. We find no merit in the above contention since the respondent is of old age, if he is ousted from the petition schedule building, no alternative accommodation is

available for him for his stay. In the circumstance, Ext.P7 order will continue till the disposal of the O.P. Learned counsel for the petitioner also submitted that they are willing and ready arrange alternative accommodation for the stay of the respondent according to his convenience in Ernakulam. Learned Judge of Family Court, Ernakulam shall consider the above aspect and dispose of the O.P, according to law. Family Court shall also see that the key of the concerned room shall be handed over to the respondent within two days from the date of production of a copy of this judgment. There is no merit in the O.P and it is dismissed accordingly.

V.K.MOHANAN, JUDGE

P.D.RAJAN, JUDGE

lgk