

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 24TH DAY OF NOVEMBER 2015/3RD AGRAHAYANA, 1937

OP (FC).No. 246 of 2014 (R)

**(AGAINST THE ORDER DATED 31-03-2014 IN IA No.364/2014 IN OP No.23/2013
OF FAMILY COURT, IRINJALAKUDA)**

PETITIONER/PETITIONER:

**LALU
S/O. CHIRAMMAL AUGUSTINE, MANAVALASSERY VILLAGE,
IRINJALAKUDA DESOM, MUKUNDAPURAM TALUK,
REPRESENTED BY THE POWER OF ATTORNEY JOSEPH,
S/O. JOSEPH, PUNATHIL HOUSE, VALLUVALLY DESOM
KOTTUVALLY VILLAGE, PARAVOOR TALUK, ERNAKULAM DISTRICT.**

BY ADV. SRI.T.N.MANOJ

RESPONDENTS/RESPONDENTS:

- 1. SHEEJA
D/O.PAZHAYEDATH PARAMBIL PETER,
PERAMANGALAM VILLAGE & DESOM, THRISSUR TALUK
THRISSUR DISTRICT-680545.**
- 2. JOSE
S/O.PAZHAYEDATH PARAMBIL PETER
PERAMANGALAM VILLAGE & DESOM, THRISSUR TALUK
THRISSUR DISTRICT-680545.**
- 3. ROSILY
W/O. PAZHAYEDATH PARAMBIL PETER
PERAMANGALAM VILLAGE & DESOM, THRISSUR TALUK
THRISSUR DISTRICT-680545.**

THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION ON 24-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

AMG

APPENDIX

PETITIONER'S EXHIBITS

- P1- TRUE COPY OF THE POWER OF ATTORNEY DATED 13.1.2012.**
- P2- TRUE COPY OF OP 166/2012 PENDING ON THE FILES OF THE FAMILY COURT AT IRINJALAKUDA.**
- P3- TRUE COPY OF OP 23/2012 PENDING ON THE FILES OF THE FAMILY COURT AT IRINJALAKUDA.**
- P4- TRUE COPY OF THE LIST OF WITNESS FILED IN OP 23/2013 PENDING ON THE FILES OF THE FAMILY COURT AT IRINJALAKUDA.**
- P5- TRUE COPY OF THE LIST OF DOCUMENTS FILED IN OP 166/2012 PENDING ON THE FILES OF THE FAMILY COURT AT IRINJALAKUDA.**
- P6- TRUE COPY OF IA 532/2014 FILED IN OP 23/2013 PENDING ON THE FILES OF THE FAMILY COURT AT IRINJALAKUDA.**
- P7- TRUE COPY OF IA 364/2014 FILED IN OP 23/2013 PENDING ON THE FILES OF THE FAMILY COURT AT IRINJALAKUDA.**
- P8- TRUE COPY OF THE ORDER IN IA 364/2014, DATED 31.3.2014, IN OP 23/2013 OF THE FAMILY COURT AT IRINJALAKUDA.**

RESPONDENTS' EXHIBITS

NIL

True copy

P.A. To Judge

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

O.P (FC) No. 246 OF 2014

DATED THIS THE 24th DAY OF NOVEMBER, 2015

J U D G M E N T

C.K. Abdul Rehim, J:

Short question involved in this original petition is with respect to correctness of the order passed by the Family Court, Irinjalakuda in dismissing the IA No.364/2014 in OP No.23/2013 which was filed seeking for joint trial of the said case along with OP No.166/2012. The petitioner herein is the petitioner in both the cases, OP Nos.23/2013 and 166/2012. OP No.166/2012 is filed seeking for cancellation of the judgment and decree passed in OP No.2139/2010, in which dissolution of the marriage between the petitioner and the 1st respondent was allowed on mutual consent, under Section 10A of the Divorce Act. OP No.23/2013 is filed by the petitioner seeking for return of jewelery, movables and for declaration of ownership over certain immovable properties.

2. The respondents herein filed IA No.532/2014 in OP No.23/2013 under Section 10 of Code of Civil Procedure seeking stay of further proceedings in the said case, on the basis that OP No.166/2012 is pending adjudication. The court below rightly found that under Section 10 of CPC the court need to refrain from proceeding with trial of any case, only if the matter in issue involved is also an issue substantially and directly in a previously instituted case between the same parties or between parties under whom they or any of them claim litigating under the same title and where the earlier suit is pending in the same or in any other court. Based on the said provision after analyzing the issue involved in both the cases, it is found that the issues are not intertwined. Hence application filed under Section 10 was dismissed.

3. But the court below had also considered IA No.364/2014 together with IA No.532/2014 and found that IA No.364/2014 filed seeking for joint trial could not be allowed, because the issues are not intertwined. It is

aggrieved by the dismissal of IA No.364/2014, the petitioner is invoking the supervisory jurisdiction vested on this court under Article 227.

4. Heard; counsel for the petitioner. Despite service of notice from this court the respondents have not chosen to enter appearance.

5. The parameters for considering an application under Section 10 of CPC and an application for joint trial of two cases, are distinct and different. When the parties in both the cases are one and the same and when the issues involved are inter-related, arising out of the same matrimonial disputes between the petitioner and the 1st respondent, there was no impediment in allowing the joint trial and in trying both the cases together, by permitting separate evidence to be adduced for both the cases. The reason for dismissal of the application for joint trial, mentioned as the issue are not intertwined, cannot be considered as a legal and justifiable ground. It will be convenient and time saving for the court to have joint trial

of both the cases together. It will also help in avoiding conflicting decisions.

6. Therefore this court is inclined to allow the above original petition by quashing Ext.P8 order to the extent it dismissed IA No.364/2014. The Family Court is directed to allow IA No.364/2014 and to proceed with both the above said cases on a joint trial basis.

Sd/-

C.K. ABDUL REHIM, JUDGE.

Sd/-

MARY JOSEPH, JUDGE.

AMG

True copy

P.A. to Judge