

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM
&
THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

TUESDAY, THE 1ST DAY OF DECEMBER 2015/10TH AGRAHAYANA, 1937

OP (FC).No. 293 of 2014 (R)

IA.2308/2013 IN OP.1096/2013 OF THE FAMILY COURT, MALAPPURAM

PETITIONER(S):RESPONDENT/PETITIONER

AYISHA AGED 41 YEARS
D/O.BEERANKUTTY, KOLATHIL NALAMKANDATHIL HOUSE
PUTHUKKODE POST
AZHINHILAM- VAZHAKKAD MALAPPURAM DISTRICT.

BY ADVS.SRI.K.P.SUDHEER
SRI.ARUN MATHEW VADAKKAN

RESPONDENT(S):PETITIONER/RESPONDENT

SULAIMAN
S/O.AHAMMAD, AYYIKKAL HOUSE, PUTHUKKODE POST
AZHINHILAM, VAZHAKKAD, MALAPPURAM DISTRICT
PIN 673633.

R BY ADV. SRI.V.PHILIP MATHEW
R BY ADV. SRI.GIBI.C.GEORGE

THIS OP (FAMILY COURT) HAVING BEEN FINALLY HEARD ON 01-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP (FC).No. 293 of 2014 (R)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT-P1: TRUE COPY OF ORIGINAL PETITION NO.1096/2013 DATED 26.11.2013 FILED BY THE RESPONDENT BEFORE THE FAMILY COURT, MALAPPURAM.

EXHIBIT-P2: TRUE COPY OF I.A.NO.2308/2013 DATED 26.11.2013 FILED BY THE RESPONDENT IN O.P.NO.1096/2013 ON THE FILE OF THE FAMILY COURT, MALAPPURAM.

EXHIBIT-P3: TRUE COPY OF COUNTER STATEMENT FILED BY THE PETITIONER IN O.P.NO.1096/2013 BEFORE THE FAMILY COURT, MALAPPURAM.

EXHIBIT-P4: TRUE COPY OF ORDER DATED 16.5.2014 IN I.A.NO.2308/2013 IN O.P.NO.1096/2013 PASSED BY FAMILY COURT, MALAPPURAM.

EXHIBIT-P5: TRUE COPY OF ORDER DATED 11.11.2013 IN CMP NO.8252/2013 PASSED BY JUDICIAL FIRST CLASS MAGISTRATE'S COURT, MALAPPURAM.

RESPONDENT(S)' EXHIBITS

EXT. R1(A) COPY OF COMPROMISE AGREEMENT.

EXT. R1(B) COPY OF DEMAND NOTICE DT. 16.10.2009 ISSUED BY THE AUTHORISED OFFICER OF THE MALAPPURAM DISTRICT CO-OPERATIVE BANK.

EXT. R1(C) COPY OF AGREEMENT DT. 23.12.2012.

EXT. R1(D) COPY OF THE COMMISSION REPORT FILED IN OP.NO.1096/13.

TRUE COPY

PS TO JUDGE

C.K.ABDUL REHIM & K.RAMAKRISHNAN, JJ.

OP(FC) No. 293 of 2014

Dated this the 1st day of December, 2015

JUDGMENT

K.Ramakrishnan,J.

This is an application filed by the petitioner who is the respondent in IA.No.2308/2013 in OP.No.1096/2013 on the file of the Family Court, Malappuram challenging Ext.P4 order passed by the Family Court in that application under Article 227 of the Constitution of India.

2. It is alleged in the petition that the petitioner is the respondent in OP.No. 1096/13 on the file of the Family Court, Malappuram which was filed by the respondent herein for permanent prohibitory injunction restraining the petitioner herein and her daughter from trespassing into the building situated in the plaint A schedule property and for a prohibitory injunction directing the petitioner to shift her residence to the petition B schedule property. It is seen from the pleadings itself that she was residing in the building in plaint A schedule property and

there is no prayer for eviction or for recovery of possession. During the pendency of the proceedings the respondent filed Ext.P2 application for interim mandatory injunction. The petitioner filed Ext.P3 counter denying allegations. The learned Family Court Judge without properly considering the objections raised and also the interim order passed by the Magistrate under the Domestic Violence Act allowed the application directing the petitioner by way of an interim mandatory injunction to vacate the plaint A schedule property. That order is being challenged by the petitioner.

3. Heard counsel for the petitioner and the counsel for the respondent.

4. Counsel for the petitioner submitted that petition B schedule property is not habitable one. There is no basic amenities available and his attempt is to deny proper residence of the petitioner. Further the court below had granted relief which had sought for in the original petition.

5. On the other hand learned counsel for the respondent submitted that as per Ext.R1(a) agreement entered into between the petitioner and the respondent, she had started residing in the

petition B schedule property from 25.4.2009 onwards and when she came to know that the respondent was going to sell petition A schedule property, she trespassed into the petition A schedule property. According to the learned counsel, the court below was perfectly justified in allowing the application.

6. It is an admitted fact that the petitioner and the respondent are man and wife and their marriage is subsisting. It is also an admitted fact that Ext.P1 petition was filed by the respondent for permanent prohibitory injunction restraining the petitioner herein from trespassing into plaint A schedule property and also for mandatory injunction directing the petitioner herein to reside in the petition B schedule property on the basis of Ext.R1(a) agreement entered into between them. Along with the petition the respondent filed Ext.P2 petition for interim mandatory injunction directing the petitioner to vacate the petition A schedule property. The petitioner filed Ext.P3 objection. The question as to whether Ext.R1(a) mediation agreement said to have been entered into between the petitioner and the respondent is a genuine agreement and that has been voluntarily accepted by the petitioner herein and whether she

has decided to reside in petition B schedule property etc. are matters to be considered in the original petition. Even in the original petition there is no prayer for evicting the petitioner or for recovery of possession of the petitioner from that building. The prayer only shows that a mandatory injunction has to be granted against the petitioner directing her to reside in the plaint B schedule property on the basis of the agreement said to have been entered into between them. Further it is seen from the documents produced that the petitioner herein moved the Judicial First Class Magistrate Court, Malappuram by filing Cr.M.P.8252/2013 under the provisions of the Protection of Women from Domestic Violence Act and the learned Magistrate by Ext.P5 granted protection order and also injunction restraining the respondent from forcibly evicting her from the shared household viz. the building mentioned in petition A schedule property and restraining the petitioner from entering into that portion of the house until further orders. However that is only a summary procedure and the ultimate right have to be decided by the competent civil court, in this case the Family Court.

7. Considering the rival contentions, this court feels that

the relief granted in the interim application is in excess of the prayer in the main petition which is not expected to be given while considering the interim relief during the pendency of the case. So the order passed by the Family Court is unjustified in law and the same is liable to be set aside and we do so. Considering the fact that the case is of the year 2013 and also the rights of the parties have to be adjudicated so as to get the petitioner a residence in the property depends upon the decision of the court below, this court feels that it is necessary to direct the Family Court Malappuram to expedite disposal of OP.No.1096/2013 at the earliest, at any rate within 3 months from the date of receipt of a copy of this judgment.

With the above direction the OP(FC) is disposed of. Office is directed to communicate this judgment to the court below by fax immediately.

C.K.ABDUL REHIM, JUDGE

K.RAMAKRISHNAN, JUDGE

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