

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

MONDAY, THE 13TH DAY OF JULY 2015/22ND ASHADHA, 1937

OP (FC).No. 579 of 2014 (R)

PETITIONER(S):

SHINILA, AGED 22 YEARS,
D/O.POLASSERY SHANMUGHAN,
CHAKKARAPADAM DESOM, PERINJANAM VILLAGE,
KODUNGALLUR TALUK.

BY ADV. SRI.RAJESH CHAKYAT

RESPONDENT(S):

VIPINDAS,
AGED 35 YEARS, S/O. MANAPARAMBIL MOHANDAS,
VELOOKKARA VILLAGE, THUMBOOR DESOM,
MUKUNDAPURAM TALUK - 680 662.

BY ADV.SRI.T.N.MANOJ

THIS OP (FAMILY COURT) HAVING BEEN FINALLY HEARD ON
13-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

:2:

OP (FC) .No. 579 of 2014

APPENDIX

PETITIONER'S EXHIBITS :

EXT.P1 : COPY OF THE PETITION IN O.P.NO.529/13 ON THE
FILE OF THE FAMILY COURT, IRINJALAKUDA.

EXT.P2 : COPY OF THE SAID I.A.NO.136/14 IN O.P.NO.529/13.

EXT.P3 : COPY OF THE OBJECTION IN I.A.NO.136/14 DTD
02.04.14.

EXT.P4 : COPY OF THE ORDER IN I.A.NO.136/14 IN
O.P.NO.529/13 DTD 03.05.14.

EXT.P5 : COPY OF THE AFFIDAVIT EXECUTED BY THE PETITIONER
DATED 16.06.2014.

RESPONDENT'S EXHIBITS :NIL

//True Copy//

P.A. To Judge

SS

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

O.P.(F.C.) No.579 of 2014

Dated this the 13th day of July, 2015

JUDGMENT

K. Ramakrishnan, J

This petition has been filed by the respondent in I.A.No.136/2014 in O.P.No.529/2013 on the file of the Family Court, Irinjalakkuda, challenging the order passed therein under Article 227 of the Constitution of India.

2. It is alleged in the petition that O.P.No.529/2013 was filed by the petitioner herein before the Family court, Irinjalakkuda, for return of gold ornaments and patrimony given at the time of marriage. The petitioner filed O.P.(Div.) No.528/2013 seeking divorce. The respondent herein filed I.A.No.136/2014 in O.P.No.529/2013 seeking an order to constitute Medical Board at Medical College Hospital, Thrissur, for undergoing virginity test by the petitioner herein. It is noted in the order that, no objection was filed in the application and so the court below had allowed the application by Ext.P4 order. In fact Ext.P3 objection was filed to that application, but it was filed in O.P.No.528/2013 filed by the petitioner for dissolution of

marriage. In fact there is no necessity to pass an order to constitute a Medical Board in O.P.No.529/2013, which was filed by the petitioner for return of gold ornaments. So the order passed by the court below is without application of mind and the same is liable to be set aside. Hence the petition.

3. Heard both sides.

4. The counsel for the petitioner submitted that, in fact the petition ought to have been filed in O.P.No.528/2013, which was filed by the petitioner for dissolution of marriage, on the ground that there was no consummation of marriage and also cruelty. But O.P.No.529/2013 was filed by the petitioner for return of gold ornaments and in fact a counter was filed in the application filed by the respondent for constituting a Medical Board to conduct virginity test of the petitioner, court below had wrongly noted that, no objection filed and allowed the application, which is not correct.

5. The application was opposed by the respondent.

6. It is an admitted fact that O.P.No.528/2013 was filed by the petitioner herein for dissolution of marriage on the ground that there was no consummation of marriage and also on

the ground of cruelty. It is also an admitted fact that the petitioner herself has filed O.P.No.529/2013 for return of gold ornaments and patrimony. In fact there is no necessity to file any application for constituting a Medical Board in O.P.No.529/2013 and finding of the Medical Board has nothing to do with the disposal of that case. The petitioner on the assumption that the petition was filed in O.P.528/2013, filed Ext.P3 objection, denying the allegations in the petition, but however, in Ext.P4 order, it was mentioned that, the counsel for the respondent had mentioned that, there is no objection and no objection was filed also. But in fact the lower court had failed to note the objection filed by the petitioner not in O.P.No.529/2013, but in O.P.No.528/2013 on the assumption that this petition might have been filed in that application. So considering the circumstances, we feel that the order passed by the court below is without considering the objection filed by the petitioner in O.P.No.528/2013, which in fact was filed by the petitioner for declaring the marriage as null and void as there was no consummation of marriage. So under the circumstances, there is no possibility for the counsel representing no objection as

detailed objection has been filed by the petitioner herein for that petition.

So under the circumstances, the order passed by the court below is set aside and it is remitted to the court below for fresh disposal in accordance with law, after considering Ext.P3 objection filed by the petitioner in O.P.No.528/2013 on the assumption that this petition was filed in that O.P.

The writ petition is disposed of accordingly.

Sd/-
C.K. Abdul Rehim, Judge

Sd/-
K. Ramakrishnan, Judge

// True Copy //

P.A. to Judge