

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

FRIDAY, THE 30TH DAY OF JANUARY 2015/10TH MAGHA, 1936

RSA.No. 986 of 2013 ()

**AGAINST THE JUDGMENT AND DECREE IN AS 194/2012 of SUB COURT, KANNUR
DATED 08-11-2012.**

**AGAINST THE JUDGMENT IN OS 422/2007 of ADDL.MUNSIFF'S COURT, KANNUR
DATED 29-09-2010.**

APPELLANT(S)/RESPONDENT/PLAINTIFF:

**P V JOSE, S/O. VAREETH, AGED 66 YEARS,
RETIRED FROM INDIAN OIL CORPORATION,
RESIDING AT PALLAKAL HOUSE,
UDAYAMPEROOR, KOCHI TALUK,
ERNAKULAM DISTRICT.**

BY ADV. SRI.V.RAMKUMAR NAMBIAR.

RESPONDENT(S)/APPELLANT/DEFENDANT:

**SMT.ELAMMA, AGED 63 YEARS,
RETIRED TEACHER, RESIDING AT JOSMA NIVAS,
NEAR CANNANCORE SPINNING MILLS, KAKKAD DESOM,
PUZHATHY VILLAGE, KANNUR - 670 005.**

BY ADV. SRI.G.SREEKUMAR.

**THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON
30-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

amk

A.HARIPRASAD, J.

R.S.A No.986 of 2013

Dated this the 30th day of January, 2015.

J U D G M E N T

Appellant is challenging the judgment and decree in A.S No.194/2012 before Sub Court, Kannur. The suit was one for recovery of possession of property described in the plaint schedule. The appellant was the plaintiff before the trial court and the respondent was the defendant. The suit was decreed by the trial court against which the respondent took up the matter in first appeal. Learned Sub Judge found that the suit was not maintainable, in view of the provisions in Sections 7 and 8 of the Family Courts Act, 1984. Consequently, the appeal was allowed and the suit was dismissed.

2. Heard the learned counsel for the appellant. On going through Section 7, Explanation (c) of the Family Courts Act, it can be seen that a suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them can be maintained only before a Family Court.

Admittedly, the parties were husband and wife at one point of time. It is the case of the appellant that on account of marital discordance, their relationship became strained and ultimately they divorced through court. The claim of the appellant in the suit can be considered in a properly constituted proceedings before Family Court. The lower appellate court is right in holding that by operation of Sections 7 and 8 of the Family Court Act, the civil court loses its competence to decide the question. This decision is fortified by the decision of a Division Bench of this Court in *Seema v. Jayagopal (2010(3) K.L.T 878)*. Considering the facts and circumstance of the case, I am of the view that the lower appellate court has correctly decided the issue and it deserves to be confirmed. Learned counsel for the appellant submitted that there may be a direction to return the plaint so as to present it before proper court. Invoking power under Order VII Rule 10 C.P.C, I find that the appellant, if so

advised, can approach the court below for seeking return of the plaint so as to present it before the appropriate Family Court, of course subject to the law of limitation and other conditions for filing a proceeding before the Family Court. As it is informed that the learned counsel who appeared for the parties in the court below is no more, a fresh counsel to be engaged by the appellant can approach the lower court for getting the plaint returned.

With these observations, the regular second appeal is disposed of.

All pending interlocutory applications will stand dismissed.

**Sd/-
A.HARIPRASAD,
JUDGE.**

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P.A to Judge