

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE SMT. JUSTICE P.V.ASHA

TUESDAY, THE 20TH DAY OF OCTOBER 2015/28TH ASWINA, 1937

Tr.Appeal(C).No. 8 of 2015 () IN Tr.P(C).393/2015

AGAINST THE ORDER IN Tr.P(C) 393/2015 of HIGH COURT OF KERALA DATED
17-09-2015

APPELLANT/PETITIONER:

MYMOONA AGED 63 YEARS
W/O.MK.IBRAHIM, NALAKATH KUTTIKAT HOUSE
CHAVAKKAD AMSOM DESOM, PO.CHAKAMKANDAM
CHAVAKKAD TALUK

BY ADV. SRI.G.SREEKUMAR (CHELUR)

RESPONDENTS/RESPONDENTS:

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1. REJI, AGED 31 YEARS
S/O.PLAVALLIL RAVEENDRAN, PARAKAD DESOM
ELAVALLI AMSOM, CHAVAKKAD TALUK 680001
 2. SHAJU, AGED 34 YEARS
S/O.PUZHANGARAILLATH ABU, MIJU NIVAS, PALUVAI DESOM
CHAKAMKANDAM PO, CHAVAKKAD AMSOM
CHAVAKKAD TALUK 680001
 3. R.A. ABDUL RASHEED, AGED 48 YEARS
S/O.RAYAMMARAKAR VEETIL R.V.ABDUL KHADER
VADOOKARA DESOM, KOORKANCHERY VILLAGE
THRISSUR TALUK 680001
 4. SOPHI ABDUL RASHEED, AGED 38 YEARS
W/O.ABDUL RASHEED, GANGA APARTMENT, SANKARA IYER ROAD
POOTHOLE VILLAGE DESOM, THRISSUR TALUK, 680001
 5. RAJA, AGED 36 YEARS
S/O.SURESH, PATTATHUVEETIL HOUSE
AYYANTHOLE VILLAGE DESOM, THRISSUR TALUK
THRISSUR DISTRICT 680001
- R3 BY ADV. SRI.SANTHOSH P.PODUVAL
R3 BY ADV. SMT.R.RAJITHA
R3 BY ADV. SMT.VINAYA V.NAIR
R BY SRI.RAJIT

THIS TRANSFER APPEAL(CIVIL) HAVING COME UP FOR ADMISSION ON
20-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

RKC

Tr.Appeal (C) .No. 8 of 2015

APPENDIX

APPELLANT'S ANNEXURES:

ANNX. I: THE CERTIFIED COPY OF THE ORDER IN TRANSFER PETITION
NO.393/2015 DATED 17.9.2015 BY THE LEARNED SINGLE JUDGE.

RKC

TRUE COPY

PA TO JUDGE

**ANTONY DOMINIC &
P.V.ASHA, JJ.**

Tr.Appeal No.8 of 2015

Dated this the 20th day of October, 2015

JUDGMENT

Antony Dominic, J.

This appeal is filed against the order passed by the learned single Judge dismissing Tr.P.(C) No.393 of 2015. The prayer in the Transfer Petition was to transfer the proceedings in P.O.P.No.20 of 2015 on the file of the Principal Sub Court, Thrissur (now transferred and pending on the file of the Sub Court, Chavakkad as O.S.No.20 of 2015) to the file of the Family Court, Thrissur to be tried along with O.P.No.1294 of 2012.

2. We heard the learned counsel for the appellant and the learned counsel appearing for the third respondent.

3. The facts required to be noted are that the appellant is the mother of the 4th respondent and the 3rd respondent is the husband of the 4th respondent. The appellant had executed a settlement deed in favour of the 4th respondent reserving life interest in the property. Subsequently the appellant and the 4th respondent executed a document, described as sale deed; which

Tr.Appeal No.8 of 2015

:2:

according to them is only a mortgage deed, in favour of respondents 1 and 2.

4. In 2012 the 3rd respondent filed O.P.No.1294 of 2012 at the Family Court, Thrissur contending that the document executed by the appellant in favour of the 4th respondent is not a settlement deed and that it is a document evidencing purchase of the property by him, in the name of his wife. In that O.P. the appellant is a party. In 2015 the appellant filed P.O.P.No.20 of 2015 referred to above at Sub Court, Thrissur challenging the document executed by her and the 4th respondent in favour of respondents 1 and 2 alleging that the document was executed at the instance of the 3rd respondent.

5. In the petition filed before this Court what the appellant prayed for was transfer of P.O.P.No.20 of 2015 to the Family Court, Thrissur to be tried along with O.P.No.1294 of 2012. The learned single Judge held that the Family Court does not have jurisdiction to entertain P.O.P.No.20 of 2015 and therefore the transfer cannot be allowed. It is the correctness of this finding which is canvassed before this Court.

6. Submission made by the learned counsel for the appellant is that the issues arising in both these proceedings are intrinsically connected and that therefore it is essential that the cases should be heard together. Insofar as the jurisdiction of the Family Court is concerned the counsel placed reliance on section 7(1)(d) of the Family Courts Act, 1984 and also to the judgment of the Division Bench of this Court in **Vasumathi Vs. Valsan** (2011 (3) KLT 638). On the other hand according to the counsel for the third respondent neither the provision relied on nor the principles laid down in the judgments have any relevance in the context of this case. He also contended that since settlement deed is not in challenge in P.O.P.No.20 of 2015, there is nothing connecting both the proceedings, justifying a transfer as prayed for.

7. We have considered the submissions made. The Family Court's Act, as is evident from its objects itself, has been enacted to provide for the establishment of Family Courts with a view to secure speedy settlement of disputes relating to the marriage and family affairs and for matters connected therein. Section 7 of

the Act provides for jurisdiction and in so far as this case is concerned, it is only necessary to consider explanation (d) to section 7(1). As per this provision, a suit or proceedings for an order or injunction in circumstances arising out of a marital relationship, is brought within the jurisdiction of the Family Court. The question therefore is whether P.O.P.No.20 of 2015 referred to above can be said to be a suit in circumstances arising out of marital relationship. Though it was in this context that the judgment in **Vasumathi Vs. Valsan** (*supra*) was referred to by the appellant, since the nature of the controversy therein is totally incomparable to the one arising in this appeal and as the Division Bench has not explained to the purport of the expression "in circumstances arising out of a marital relationship", we do not think that the said judgment is of any assistance to resolve the controversy arising in this case. Insofar as P.O.P.No.20 of 2015 is concerned, that was filed by the appellant, the mother, against respondents 1 and 2, who are total strangers and the challenge in that P.O.P is against the documents executed by the appellant and the 4th respondent in

Tr.Appeal No.8 of 2015

:5:

favour of respondents 1 and 2. In that proceedings she is not challenging the settlement deed executed by her in favour of her daughter who is married to the 3rd respondent.

Therefore the proceedings in P.O.P.No.20 of 2015 cannot be said to be one in "circumstances arising out of marital relationship" to be brought within explanation (d) to section 7(1). Therefore such a suit can not be entertained by the Family Court and only if the Family Court has competence to entertain the P.O.P, it could have been ordered to be transferred to that court for trial along with O.P.No.1294 of 2012 filed by the 3rd respondent. In other words the view taken by the learned single Judge that the P.O.P. cannot be transferred to the Family Court, does not suffer from any illegality for interference.

The appeal is dismissed.

Sd/-
ANTONY DOMINIC,
JUDGE.

Sd/-
P.V.ASHA,
JUDGE.

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