



2026:KER:73656

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE SATHISH NINAN

&

THE HONOURABLE MR.JUSTICE P. KRISHNA KUMAR

SATURDAY, THE 26TH DAY OF SEPTEMBER 2026 / 4TH ASWINA, 1948

MAT.APPEAL NO. 581 OF 2022

AGAINST THE ORDER DATED 07.05.2021 IN OP NO.807 OF 2017 OF
FAMILY COURT, MALAPPURAM

APPELLANT/PETITIONER:

BY ADVS.
SRI.P.SAMSUDIN
SMT.MILAN RACHEL MATHEW
SMT.LIRA A.B.

RESPONDENT/RESPONDENT:

BY ADV SRI.R.RAJESH KORMATH

THIS MATRIMONIAL APPEAL HAVING COME UP FOR HEARING ON
16.09.2026, ALONG WITH MAT.APPEAL.84/2022, THE COURT ON 26.09.2026
DELIVERED THE FOLLOWING:



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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE SATHISH NINAN

&

THE HONOURABLE MR.JUSTICE P. KRISHNA KUMAR

SATURDAY, THE 26TH DAY OF SEPTEMBER 2026 / 4TH ASWINA, 1948

MAT.APPEAL NO. 84 OF 2022

AGAINST THE ORDER DATED 7.5.2021 IN OP NO.807 OF 2017 AND
COUNTERCLAIM IN O.P.NO.807 OF 2017 OF FAMILY COURT, MALAPPURAM

APPELLANT/RESPONDENT:

BY ADV SRI.R.RAJESH KORMATH

RESPONDENT/PETITIONER:

BY ADVS.
SRI.M.ANUROOP
SRI.P.SAMSUDIN
SHRI.SHYAM NAIR
SMT.LIRA A.B.

THIS MATRIMONIAL APPEAL HAVING COME UP FOR HEARING ON
16.09.2026, ALONG WITH MAT.APPEAL.581/2022, THE COURT ON
26.09.2026 DELIVERED THE FOLLOWING:



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CR

SATHISH NINAN & P. KRISHNA KUMAR, JJ.

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Mat.Appeal Nos.84 & 581 of 2022

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Dated this the 26th day of September, 2026**JUDGMENT****P.Krishna Kumar, J.**

The petition for return of gold ornaments and money, and for maintenance, filed by the wife against the husband, was decreed in part by the Family Court. Both sides are in appeal, against the respective parts of the decree to the extent it is adverse to them.

2. The parties will hereinafter be referred to as they were arrayed in the petition. The respondent married the petitioner on 15.09.2012 in accordance with Mohammadan law. According to the petitioner, when she was taken to the residence of the respondent after the marriage, she was in possession of 85 sovereigns of gold ornaments. However, before she went abroad along with the respondent, he obtained 80 sovereigns of her gold ornaments for the purpose of keeping them safely in a locker. The respondent obtained Rs.5,50,000/- from the father of the petitioner, allegedly for renovating his house. While they were living abroad, the father of the petitioner deposited 5,000 Saudi Riyals (around Rs.85,000/-) in



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the bank account of the respondent for his needs. Owing to the ill-treatment meted out to her by the respondent, their marital relationship fell apart and that, ultimately, following a mediation, the respondent deposited Rs.3,00,000/- in her father's bank account.

3. The petitioner further states that, on 09.11.2015, her father provided funds and purchased a residential property having an extent of 7 cents in Manjeri Municipality for the petitioner, in the names of the petitioner and the respondent by availing a loan from the Nilambur Co-operative Urban Bank, Edavanna Branch.

4. The petitioner claimed recovery of 80 sovereigns of gold ornaments or their market value, together with Rs.3,35,000/-, being the amount allegedly given by her father. She also claimed Rs.15,00,000/-, being the value of the half share of the respondent in the immovable property, the other half being already registered in her name. Alleging that the respondent had failed to maintain her for the preceding 13 months, she further claimed past maintenance for the said period at the rate of Rs.15,000/- per month.



5. The respondent refuted the above allegations and contended that the petitioner herself had been keeping all her gold ornaments. According to him, at the request of the petitioner, he deposited Rs.2,00,000/- on 12.02.2017 and Rs.1,00,000/- on 02.07.2017 in the account of her father, who was then in dire financial straits. Accordingly, the respondent filed a counterclaim for recovery of the said amount from the petitioner. The respondent further contended that he purchased the residential plot in question near his mother's house by utilising his own funds, since the petitioner was reluctant to reside in the respondent's family house. He further contended that the property was purchased in their joint names in the best interests of the family. Contending that the petitioner had been residing separately from him without any reasonable or justifiable cause, the respondent disputed his liability to pay maintenance.

6. During the trial, the Family Court jointly tried two other petitions, one filed by the wife seeking divorce and the other filed by the husband seeking restitution of conjugal rights, along with the above petition, and disposed of all three petitions by a common order. The present appeals are confined to O.P.No.807/2017,



wherein the petitioner claimed return of gold ornaments and money and maintenance.

7. Upon appreciation of the evidence, the trial court concluded that the petitioner had failed to establish her claims in respect of the gold ornaments, money and maintenance. The court also dismissed the counterclaim filed by the respondent. However, the court held that, since it was proved that the property had been purchased exclusively with the money raised by the father of the petitioner, the petitioner was entitled to recover Rs.15,00,000/- from the respondent.

8. We have heard Sri. Rajesh R. Kormath, the learned counsel appearing for the respondent, and Sri. P. Samsudin, the learned counsel appearing for the petitioner.

9. The following points arise for consideration:

1. Whether the petitioner is entitled to recover 80 sovereigns of gold ornaments from the respondent?
2. Whether the petitioner is entitled to recover Rs.3,35,000/- from the respondent?
3. Whether the respondent is entitled to recover Rs.3,00,000/- from the petitioner?
4. Whether the petitioner is entitled to past maintenance for a period of 13 months?



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5. Whether the property in question was purchased by utilising the money given by the father of the petitioner?

6. If so, what relief is the petitioner entitled to?

10. To prove the claims made by her, the petitioner examined herself as PW1. PW2 and PW3, the Secretaries of the respective Mahal Committees, and PW4, her father. According to the petitioner, she had adorned 85 sovereigns of gold ornaments at the time of her marriage. In support of this contention, she produced Ext.A2 series issued by Malabar Gold Jewellery, Nilambur. She also produced Ext.A8 series marriage photographs. Though the genuineness of Ext.A2 series documents was challenged by the learned counsel appearing for the respondent on the ground that they are only 'quotations' and not bills, we do not propose to delve deeper into that aspect, having regard to the view we propose to take on the matter.

11. The petitioner claims that, just before she went abroad along with the respondent, she entrusted 80 sovereigns of gold ornaments to him for keeping them in a locker. According to her, the gold ornaments were entrusted on 20.04.2015 and thereafter she went abroad on 23.04.2015. During cross-examination, she was confronted with Ext.B3 photograph, and she conceded that the



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photograph was taken on the occasion of the marriage of the respondent's brother. It was further brought out in cross-examination that the marriage of the respondent's brother was held two days before she went abroad. It could be seen from the photograph that she was wearing only one chain at that time. Though it is stated in the petition that they went abroad on 23.04.2015, during cross-examination she stated that they had gone abroad on 21.04.2015. She further admitted that, until 20.04.2015, all her gold ornaments were in her possession. If that be so, it is difficult to accept that she would not have worn any ornaments other than the one short chain seen in Ext.B3 photograph, in such a function. Significantly, she also stated in cross-examination that, immediately after the said marriage function, they went to her own family house and that both of them went abroad from there. The relevant part of her statement reads thus:

"2015 April 21-ന് ഭർത്താവുമൊത്ത് ഞാൻ വിദേശത്തു പോയി 18/4/2015-ന് ഭർത്താവ് വന്നു. എന്ന് പറഞ്ഞാൽ തീയതി ഓർമ്മയില്ല പോകുന്നതിന് ഏതാനും ദിവസങ്ങൾക്കു മുൻപ് വന്നു അനുജന്റെ വിവാഹം കഴിഞ്ഞ് 2 ദിവസം കഴിഞ്ഞ് ഞങ്ങൾ വിദേശത്ത് പോയി. അനുജന്റെ കല്യാണം കഴിഞ്ഞ് പിറ്റേ ദിവസം രാത്രി ഞങ്ങൾ എന്റെ വീട്ടിൽ വന്ന് അവിടെ നിന്നും കരിപ്പൂർ വഴി ഞങ്ങൾ വിദേശത്ത് പോയി. എന്നെ കാണിച്ചത് ഭർത്താവിന്റെ അനുജന്റെ കല്യാണം ദിവസം എടുത്ത ഫോട്ടോയാണ് എന്നെ കാണിച്ചത് (marked as Ext. B3) അതിൽ നീല ചുരിദാർ ധരിച്ച് നിൽക്കുന്നത് ഞാനാണ്. കൂടെ ഉള്ളത് അനുജന്റെ ഭാര്യയാണ്. ഞാൻ ഫോട്ടോ മൊബൈൽ ഫോണിൽ എടുത്തില്ല. Ext. B3 ഫോട്ടോയിൽ ഞാൻ ഒരു മാല ധരിച്ചിട്ടുണ്ട്. ഞാൻ വിദേശത്ത് പോയ സമയം ഒരു വള കാണാനില്ല എന്ന് ഞാൻ ഭർത്താവിന്റെ ഉമ്മയെ വിളിച്ചു. പറഞ്ഞിരുന്നു എന്ന് പറഞ്ഞാൽ ശരിയല്ല 2015 April മാസം 20-ാം തീയതി വരെ എന്റെ ആഭരണങ്ങൾ എന്റെ സുരക്ഷിതമായ സൂക്ഷ്മത്തിലും



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കൈവശത്തിലും ആണ് എന്ന് ഹർജിയിലും അഫീഡവിറ്റിലും പറഞ്ഞു."

12. The only evidence adduced to prove the entrustment of the gold ornaments with the respondent is the oral testimony of the petitioner. That evidence stands stoutly controverted by the testimony of RW1, the respondent. When the petitioner admits that she had worn only one chain at the marriage function of her husband's brother, despite claiming that all her gold ornaments were then in her possession, and when she further admits that she went abroad along with her husband from her parental home, we do not find her claim that she had entrusted her gold ornaments to the respondent, to be a probable version. The trial court, having had the advantage of observing the demeanour of the witnesses, found her claim improbable for the various reasons set out in the judgment. We fully concur with the view taken by the trial court. We therefore conclude that the petitioner is not entitled to recover any gold ornaments from the respondent.

13. Though the petitioner contended that her father had given Rs.5,50,000/- to the respondent, we do not find any reliable material in support of the said claim. Apart from the oral evidence of PW1 and PW4, there is nothing on record to substantiate the



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allegation. If PW4 had given such a substantial amount to the respondent, he ought to have been in a position to produce some material to show that he had sufficient funds to raise such an amount at the relevant point of time. In respect of this claim also, the trial court did not find the oral testimony of PW1 and PW4 to be reliable. No material has been placed before us to warrant a contrary finding. We therefore conclude that the petitioner is not entitled to recover the said amount from the respondent.

14. The counterclaim set up by the respondent, contending that he had deposited Rs.3,00,000/- in the account of the father of the petitioner, is also not sustainable. The respondent has not proved that the said amount was paid on behalf of the petitioner. In the absence of any evidence substantiating such a case, the respondent cannot be permitted to recover from the petitioner any amount allegedly paid by him to her father. It is also significant that the father of the petitioner is not a party to the proceedings.

15. As regards the claim for past maintenance made by the petitioner, the respondent contended that she had been earning a monthly income of Rs.50,000/-. The trial court rejected the claim



for past maintenance, observing that the petitioner had admitted during cross-examination that she used to stay abroad for most of the time and that, despite admitting that her bank account would disclose her income, she had not produced the bank passbook for the perusal of the court. The petitioner has not placed any material before us to substantiate or justify her claim for past maintenance. We therefore find no reason to interfere with the finding of the trial court in that regard. Accordingly, the decree on that aspect is also upheld.

16. We now come to the question relating to the property purchased in the joint names of the petitioner and the respondent. The petitioner contended that, on 09.11.2015, her father raised funds and purchased 2.8 Ares (7 cents) of land, together with the building standing thereon for her, for a consideration of Rs.30,00,000/-. According to the petitioner, though the entire sale consideration was provided by her father, the property was purchased in the joint names of the petitioner and the respondent in the best interests of their marital relationship. PW4, the father of the petitioner, deposed that he raised the funds by availing a loan from the Nilambur Co-operative Urban Bank, Edavanna



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Branch. Ext.A3 statement of account issued by the Nilambur Co-operative Urban Bank in the name of PW4 on 12.12.2017 shows that, on 09.11.2015, i.e., the date on which the sale deed was executed, an amount of Rs.25,00,000/- was debited from his account. Ext.A3 further shows that, on 02.11.2015, an amount of Rs.25,00,000/- had been credited to his account, seemingly as a loan.

17. Though the respondent stoutly contended that the property was purchased by him by utilising his own funds, no evidence has been brought before the court to show the source from which he raised the amount paid towards the sale consideration. During cross-examination, he was confronted with that aspect. He then admitted that the amount had not been withdrawn from any bank account, but had been given to him by his brother-in-law, who was working abroad along with him. The relevant part of his statement is as follows:

“ഇത് വാങ്ങാനുള്ള പണം ഞാൻ ബാങ്ക് accountൽ നിന്ന് എടുത്തതല്ല. എന്റെ പണം എന്റെ അളിയന്റെ അടുത്ത് ഉണ്ടായിരുന്നു. അളിയൻ തന്നതാണ്. ഞാൻ അളിയനുമൊത്ത് സൗദിയിൽ ഒരുമിച്ച് ജോലി ചെയ്തിരുന്നു. ആ സമയം എന്റെ പണം കൈകാര്യം ചെയ്തിരുന്നത് അളിയനാണ്. ഭാര്യയ്ക്ക് പണമയച്ചു കൊടുത്തത് അളിയനല്ല. അളിയന്റെ അടുത്ത് എന്റെ കാശുണ്ടായിരുന്നു എന്നാണ് പറഞ്ഞത്. എന്റെ പണം അളിയന്റെ അടുത്ത് ഇരുന്നത് വാങ്ങി ഞാൻ പണം കൊടുത്തുവെന്ന് ഞാൻ പത്രികയിൽ പറഞ്ഞില്ല.”

First of all, the respondent did not examine the said person to



prove the source of the funds. He also failed to produce any documents to show how the money was brought to India for purchasing the property. If he had paid the consideration or any part of it, definitely, he would have had some material to prove the same, especially since he was abroad at that time. Thus, he failed to prove the payment of any such amounts.

18. Significantly, the respondent admitted during cross-examination that the original title deed of the property is in the possession of the petitioner. He also conceded that it was the petitioner who obtained the sale deed from the Sub-Registry. In view of the above discussion, the petitioner's claim regarding the purchase of property for her with the funds provided by her father, but in the joint names in the best interests of the family, stands proved.

19. Nevertheless, Sri. Rajesh R. Kormath, the learned counsel appearing for the respondent, strenuously contended that the claim made by the petitioner in relation to the above property could not be allowed in view of the bar contained in Section 92 of the Indian Evidence Act, 1872. According to him, when the sale consideration shown in Ext.B1 is only Rs.7,58,000/-, the trial court was not justified in awarding Rs.15,00,000/- as the value of the half share



of the property, as such a finding would offend Section 92.

20. Section 92 of the Indian Evidence Act prohibits the parties to a document from adducing oral or other evidence in variation of the terms of a contract, grant or disposition of property. The relevant part of Section 92 reads thus:

“92. Exclusion of evidence of oral agreement. When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to or subtracting from, its terms:”

(emphasis added)

No doubt, a recital regarding payment of consideration is a recital of fact and not a term of the contract. It is not so when it comes to the quantum of consideration. To that extent, the contention advanced by the learned counsel appearing for the respondent is relevant. However, Section 14 of the Family Courts Act, 1984 ('the Act', for short) expressly provides that the Family Court may receive in evidence any *“report, statement, documents, information or matter”*, whether or not the same would otherwise be *relevant or admissible* under the Indian Evidence Act, 1872, if the court considers that such evidence would assist it in dealing effectually with the dispute. Section 14 reads thus:



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“14. Application of Indian Evidence Act, 1872.-

A Family Court may receive as evidence any report, statement, documents, information or matter that may, in its opinion, assist it to deal effectually with a dispute, whether or not the same would be otherwise relevant or admissible under the Indian Evidence Act, 1872 (1 of 1872).”

Indeed, Section 92 of the Indian Evidence Act states that no such oral agreement or statement *shall be admitted* if it would vary from the terms of any contract, grant or other disposition of property. Nevertheless, in view of the specific enabling provision referred to above, the Family Court can take into consideration any such statement, information or document if it finds that the same is necessary for effectively resolving the dispute. Once the Family Court arrives at such conclusion, it can rely on any such evidence dehors Section 92, in the light of Section 14 of the Act, which gives an overriding effect to the provisions relating to *relevancy and admissibility* under the Indian Evidence Act, 1872.

21. We hasten to add that, while Section 14 of the Act gives discretion to the Family Court, in a given case, to admit evidence which may otherwise be inadmissible under Section 92 of the Indian Evidence Act, such discretion should be exercised with due care and caution, having regard to the laudable objects underlying Section 92. The reliability and probative value of such materials are also



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to be tested in the light of the facts and circumstances of each case. This Court has held that the Family Courts are bound to adhere to the fundamental rules of evidence founded on logic, fairness and expediency, as well as the principles of natural justice, even when Section 14 of the Act permits them to receive evidence which may otherwise be irrelevant or inadmissible under the Indian Evidence Act [See *Pramod E.K. v. Louna V.C.*, (2019 (1) KHC 292)].

22. Coming to the disputed questions before us, we have no hesitation in holding that the oral evidence of PW1 and PW4, which is substantially corroborated by Ext.A3, is sufficient to establish that the actual consideration paid for purchasing the property was not the amount shown in Ext.B1 and that the entire sale consideration was paid by the father of the petitioner. The purpose for which the property was purchased, namely, the welfare of his daughter, the petitioner, is beyond dispute, and is established by his evidence as PW4. Significantly, the jurisdictional Family Court, having a better understanding of the local circumstances, upon evaluating the oral and documentary evidence, concluded that, considering that the property in question admittedly lies by the side of a Municipal Road and that the building situated therein is



a two-storied residential house, the petitioner's claim that its actual consideration is much more than what is recited in the deed, is highly probable.

23. However, it is contended by the learned counsel appearing for the respondent that this Court, in ***Shereefa Shanavaz v. Shanavaz***, (2026 (4) KLT 597), held that, in the absence of any specification in the sale deed regarding the respective shares of the parties in the property, the parties are to be treated as co-owners in equal shares. On perusing the decision cited above, we find that the said conclusion was rendered in the peculiar factual circumstances of that case. In paragraph 13, Their Lordships observed that “.... *the possibility that it was in recognition of the wife's contributions to the matrimonial relationship that she was made a co-owner of the property*”. The Court further observed in paragraph 12 as follows:

“As has already been noticed in the decisions referred above, the intention of the parties at the time of execution of the sale deed in relation to the property, has to be gathered from an overall consideration of the surrounding circumstances, including the relationship between parties, their conduct previous and subsequent to the transaction, source of money for purchase, possession of the property, possession of title documents etc.”

Further, the application of Section 45 of the Transfer of Property



Act, 1882, was not under consideration in that case. Section 45 provides that, where consideration is paid out of a separate fund belonging to the persons in whose favour the property is transferred, they are, in the absence of a contract to the contrary, respectively entitled to interests in such property in proportion to the shares of the consideration which they respectively advanced. This Court, in *Vasanthakumary v. Omanakuttan Nair*, (2009 (2) KHC 1049), had explained the legal position in that regard. In the present case, it is proved that the entire consideration was provided by the father of the petitioner in the best interests of his daughter and for her benefit and that it belongs to her.

24. In the impugned order, the trial court observed that the petitioner was actually entitled to get a declaration of exclusive ownership of the above property, but she has, instead, prayed only for return of the money paid for the half share of the property standing in the name of the respondent and hence the court is granting that limited relief. In this regard, Sri. P. Samsudin, the learned counsel appearing for the petitioner, submitted that the petitioner has already filed an application for amendment of the original petition so as to enable her to seek a declaration of her



right over the said property as well for a mandatory injunction directing the respondent to vacate the property, instead of merely obtaining the value of the half share of the respondent in the said property. The learned counsel further submitted that, even without effecting such amendment, the petitioner is entitled to the said relief if this Court exercises its jurisdiction under Order VII Rule 7 of the Code of Civil Procedure, as it is open to the court to mould the relief in a just and reasonable manner, on the basis of the materials pleaded and proved.

25. The said application for amendment is stoutly opposed by the learned counsel appearing for the respondent on the ground that it is highly belated and, therefore, not maintainable in view of the prohibition contained in the proviso to Rule 17 of Order VI of the Code of Civil Procedure. It is well settled that, in family disputes, the role of the court is somewhat different from that in ordinary civil litigation. In matters involving technicalities of the above nature, Section 10(3) of the Act also provides that, notwithstanding the provisions contained in the Code of Civil Procedure, which is made applicable to Family Courts by sub-section (1) of Section 10, the Family Court may lay down its own procedure



with a view to arriving at the truth of the facts alleged by one party and denied by the other. Having been satisfied that the property was purchased for the petitioner, we do not find any impediment in declaring the petitioner's exclusive title in respect of the said property, even without allowing the application for amendment. We have noticed that, in paragraph 13 of the original petition, what the petitioner has essentially pleaded is as follows:

“എതുകക്ഷി നിരന്തരമായി ആവശ്യപ്പെടുകയും ഹരജിക്കാരിയെ വീട് വാങ്ങുന്നതിനെ പറ്റി പറഞ്ഞു ബുദ്ധിമുട്ടിച്ചതിനെ തുടർന്ന് 09 -11 -2015 -ന് ഹരജിക്കാരിയുടെ ബാപ്പ 30 ലക്ഷം രൂപ കൊടുത്തു മഞ്ചേരി മുനിസിപ്പാലിറ്റിയിലെ റീ സർവ്വേ നമ്പർ 4 ൽ പെട്ട 7 സെന്റർ സ്ഥലവും വീടും ഹരജിക്കാരിയുടെയും എതുകക്ഷിയുടെയും പേരിൽ വാങ്ങി തരുകയുണ്ടായി. ഹരജിക്കാരിയുടെ ഭാവി ഭദ്രതക്കും സുരക്ഷിത ജീവിതത്തിനും വേണ്ടിയാണ് പിതാവ് 30 ലക്ഷം രൂപ കൊടുത്തു വീട് വാങ്ങിയത്. മേൽ വീട് വാങ്ങുന്നതിലേക്കായി എതുകക്ഷി ഒരു സംഖ്യയും ചിലവഴിച്ചിട്ടില്ല. എന്നാൽ മേൽ വീടിനെ പകുതി അവകാശം എതുകക്ഷി പേരിലാണ്. ആയതിനാൽ ഹരജിക്കാരിക്ക് വേണ്ടി ബാപ്പ ചിലവഴിച്ച 30 ലക്ഷം രൂപയിൽ 15 ലക്ഷം രൂപ എതുകക്ഷി ഹരജിക്കാരിക്ക് നൽകേണ്ടതുണ്ട്.”

The above pleading essentially raises a claim to exclusive right over the said property. It is in that context that the petitioner pleaded that the respondent had not contributed any amount towards the sale consideration. The relief sought by the petitioner in respect of the said property is also referable to her right over the entire property. It reads thus:

“(c) ഹരജിക്കാരിയുടെയും എതുകക്ഷിയുടെയും പേരിൽ ഹരജിക്കാരിയുടെ ബാപ്പ 30 ലക്ഷം



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രൂപ നൽകി വാങ്ങിയ 7 സെന്റ് സ്ഥലത്തിന്റെയും വീടിന്റെയും പകുതി അവകാശത്തിന്റെ വിലയായ 15,00,000/- രൂപ (പതിനഞ്ച് രൂപ മാത്രം) ഹരജിക്കാരിക്ക് തരുവാൻ എത്രകക്ഷിയോട് കല്പിച്ചു."

In the light of the above pleadings, and having regard to the specific and emphatic denial by the respondent of the said claim in his written objection, it is evident that the respondent defended the case with full knowledge of the true nature of the petitioner's claim. Therefore, no prejudice will be caused to him if we mould the relief in the above manner.

26. The relief of mandatory injunction sought is only ancillary to the declaration of title. Evidently, a plea of adverse possession does not arise and the respondent is not entitled to defend his possession. Remitting the matter to the Family Court at this distance of time, solely for deciding that question would only be a futile exercise, as there is virtually nothing further to be adjudicated in that regard. Once this Court finds that the title to the property is exclusively vested in the petitioner, there is no scope for the respondent to set up an independent right over the said property.

27. In *Syamini S. Nair and Others v. Sreekanth R.*, (2022 (3) KHC 145), while referring to Rule 7 of Order VII, this Court held that it shall not be necessary to ask for a general or other relief



which may always be given as the Court may think just, to the same extent as if it had been asked for. Having found the circumstance in which the name of the respondent came to be included in the title deed, and the nature and duration of the respondent's possession over the said property, we are compelled to conclude that, in the interests of justice, the relief in the present case has to be moulded, declaring the exclusive ownership of the property upon the petitioner, while incidentally permitting her to obtain vacant possession thereof.

28. It is, therefore, concluded that the decree passed by the Family Court is liable to be modified by declaring the exclusive right of the petitioner over the said property and permitting her to obtain vacant possession thereof from the respondent.

In the result, Mat.Appeal No.84/2022 is dismissed. Mat.Appeal No. 581/2022 is allowed in part. It is declared that the petitioner has exclusive ownership over the 2.8 Ares of land and the building standing therein, as described in Ext. B1 sale deed, lying in Re-Survey No.104/50, Block No. 50, Narukara Village, Eranad Taluk. The respondent is further directed to vacate the said property within 3 months. The schedule of Ext.B1 tile deed will form part of the



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decree. The decree passed by the trial court granting ₹15,00,000/- to the petitioner as the share of the said property is modified accordingly. The remaining part of the decree is upheld.

Sd/-

SATHISH NINAN

JUDGE

Sd/-

P. KRISHNA KUMAR

JUDGE

SV