



2024/KER/16514

'CR'

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

&

THE HONOURABLE MR. JUSTICE C.PRATHEEP KUMAR

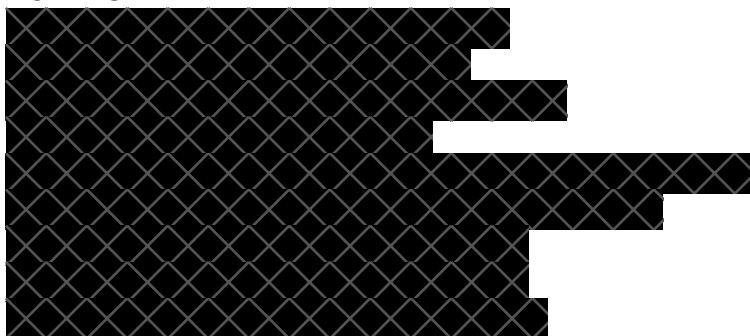
FRIDAY, THE 1<sup>ST</sup> DAY OF MARCH 2024 / 11TH PHALGUNA, 1945

OP (FC) NO. 58 OF 2024

I.A.NOs.6/2022 & 7/2023 IN OP NO.66 OF 2021 OF FAMILY  
COURT, MUVATTUPUZHA

PETITIONER/RESPONDENT No.1:

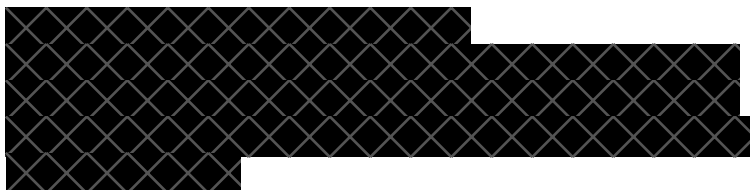
ISAHACK



BY ADVS.  
C.DILIP  
R.PRADEEP  
JIJO JOSEPH  
ANUSHKA VIJAYAKUMAR  
VINCENT K.D.

RESPONDENT/PETITIONER.RESPONDENTS 2 & 3:

1 MINI

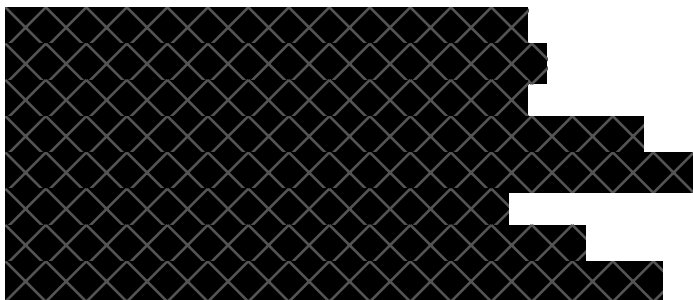




*O.P(FC).58/2024*

2

2 MINI



3 BINU



BY ADV SACHIN RAMESH

THIS OP (FAMIL COURT) HAVING COME UP FOR ADMISSION  
ON 19.2.2024, THE COURT ON 01.03.2024 DELIVERED THE  
FOLLOWING:

**C.R.****J U D G M E N T**Dated this the 1<sup>st</sup> day of March, 2024C. Pratheep Kumar, J.

This is a petition filed by the respondent in OP. No.66 of 2021 on the file of the Family Court, Muvattupuzha, against the order in I.A. No.6 of 2022 and I.A. No.7 of 2023 holding that the OP is maintainable.

2. The petitioner herein is the father in-law of the 1<sup>st</sup> respondent. The 3<sup>rd</sup> respondent is the husband of the 1<sup>st</sup> respondent and 2<sup>nd</sup> respondent is the daughter of the petitioner. The above O.P. was filed by the 1<sup>st</sup> respondent with a prayer for declaring her title over the schedule property, to set aside Settlement Deed No.3403/2020 of Muvattupuzha SRO, for a direction to the 1<sup>st</sup> respondent (petitioner herein) to assign the schedule property in her favour and in the alternative to permit her to realise a sum of Rs.6 Lakhs with interest from the petitioner and 2<sup>nd</sup> respondent.

3. The 1<sup>st</sup> respondent filed the above O.P contending that in connection with the marriage between herself and the 3<sup>rd</sup> respondent, a sum of Rs.1,50,000/- was entrusted with the petitioner herein as a trustee on the date of betrothal. Out of which Rs.1,00,000/- was deposited in the



*O.P(FC).58/2024*

4

name of his daughter, the 2<sup>nd</sup> respondent as well as her husband, on the promise that the petitioner would assign the A schedule property in favour of the 1<sup>st</sup> respondent. It was further alleged that 15 sovereigns of gold ornaments of the 1<sup>st</sup> respondent was taken by the petitioner and given the same to the 2<sup>nd</sup> respondent on some understanding. However, in violation of the above understanding the petitioner has executed Settlement Deed No.3403/2020 in respect of the scheduled property in favour of the 2<sup>nd</sup> respondent. It was in the above context, the 1<sup>st</sup> respondent preferred the above O.P.

4. The petitioner herein, challenged the maintainability of the O.P. on the ground that the Family Court has no jurisdiction to entertain this O.P. However, as per the impugned order, the Family Court found that the O.P. is maintainable. Aggrieved by the above order, he preferred this O.P.

5. It was argued on behalf of the petitioner that it is a case in which the father-in-law executed a Settlement Deed in respect of his property in favour of his daughter, which is being challenged by the daughter-in-law. It was argued that the above dispute is not something arising out of the marital relationship between the respondents 1 and 3 and as such the Family Court has no jurisdiction in the matter. On the



*O.P(FC).58/2024*

5

other hand, the learned counsel for the 1<sup>st</sup> respondent would argue that it is because of the marital relationship between respondents 1 and 3, a sum of Rs.1,50,000/- and 15 sovereigns of gold ornaments belonging to the 1<sup>st</sup> respondent was given to the petitioner herein and as such the dispute involved in the case is in 'circumstances arising out of a marital relationship' and as such, it will come within the purview of Explanation (d) to Section 7 (1) of the Family Courts Act, 1984.

6. As per Explanation (d) to Section 7 (1) of the Family Courts Act, a suit or proceeding for an order or injunction in circumstances arising out of a marital relationship would come within the jurisdiction of the Family Court. In the instant case, the specific case of the 1<sup>st</sup> respondent is that at the time of betrothal, a sum of Rs.1,50,000/- was entrusted with the petitioner herein as a trustee and out of which, a sum of Rs.1,00,000/- was deposited in the name of the 2<sup>nd</sup> respondent and her husband. It is also alleged that 15 sovereigns of gold ornaments belonging to the 1<sup>st</sup> respondent were taken by the petitioner and given to the 2<sup>nd</sup> respondent on the understanding that the schedule property will be assigned in favour of the 1<sup>st</sup> respondent. In violation of the above understanding, the petitioner executed settlement Deed No.3403/2020 in favour of the 2<sup>nd</sup> respondent.



7. The learned counsel for the petitioner relied upon the decision of a Division Bench of this Court in **Anitha v. Remani Nair [2014 KHC 873]** to substantiate his contention that the Family Court has no jurisdiction in the matter. It was a case in which the wife and children of the deceased had filed a suit for partition before the Sub Court Palakkad. The defendants raised a contention that civil court has no jurisdiction to entertain the suit. In paragraph 16 of the judgment, the Division Bench held as under:

*“This is not a proceedings between parties to a marriage. The parties to it claim right under a partition deed. Their right is independent of the marriage between the plaintiff and her deceased husband. The relationship between the parties is irrelevant to decide the lis.”*

8. It was a suit for partition filed by a wife and children after the death of her husband. On the death of husband, their right in the property got crystallised and what remains is only partition of the property by metes and bounds among the sharers. The marital relationship between the parties was not at all relevant for the determination of the lis involved in the suit. The right of the parties in the suit was independent of the marriage between the parties to the marriage. It was in the above facts this court held that the civil court has jurisdiction to entertain the suit.



Therefore, the above decision does not apply in the present case.

9. In the decision in **Anil Kumar K.B. v. Sheela N.S. and others [2011 (3) KHC 942]**, wife stood as surety for the brother of her husband for an amount due from him to KSFE at the time when her marital relationship with her husband was subsisting and while she was staying in her matrimonial home. When the husband's brother defaulted repayment of the amount, the same was realised from the wife. The wife filed the suit for realisation of the money against the brother of her husband in Family Court. In the above case, a dispute arose with regard to the jurisdiction of the Family Court. A Division Bench of this Court while holding that the Family Court has jurisdiction in the matter, held that the wife happened to stand as surety only because of the influence or compulsion of the husband and as such the amount due from the brother of her husband arose in circumstances arising out of the marital relationship.

10. In the decision in **Janaki Amma and Others v. Renuka Sadanandan and Others [2016 (1) KHC 266]**, the mother-in-law agreed to assign her property in favour of the daughter-in-law in consideration of the amount received by her to discharge her bank liability. Thereafter, in violation of the above agreement, mother-in-law assigned the property to



her sons. The wife filed a suit for declaration that she is the absolute owner of the above property and also for consequential reliefs. In the above factual situation, a Division Bench of this Court held that the above dispute is one in the circumstances arising out of a marital relationship in the following words:

*“17. When the facts of the case at hand is analyzed based on the above said parameters, it is evident that the claim of the 1<sup>st</sup> respondent that she paid money to the 1<sup>st</sup> appellant by disposing her own property for discharging the bank liability of the mother-in-law, on the basis of a specific understanding that the B-schedule property will be assigned into her name, has got a clear stem arising out of a circumstances connected to a marital relationship. Since the alleged promise was not complied with and since the 1<sup>st</sup> appellant had assigned the properties to her sons, the 1<sup>st</sup> respondent is claiming declaration of title over the property contained in B-schedule. The alleged transaction of the 1<sup>st</sup> respondent selling her own property for discharging her mother-in-law's debt on the basis that the B-schedule will be assigned to her name, happens only because of the matrimonial relationship of the parties as daughter-in-law and mother-in-law. But for the marriage of the 1<sup>st</sup> respondent with the son of the 1<sup>st</sup> appellant, such an alleged transaction would not have taken place. Therefore the cause of action agitated against the mother-in-law had arisen from circumstance connected with the matrimonial relationship. Whether the parties to the marriage are parties to the lis, becomes immaterial in such circumstances.*





*Therefore considering the wider interpretation to be given to the ambit and scope of the explanation contained under clause (d), as guided by binding precedents of this court and the Hon'ble Supreme Court, we are persuaded to hold that the cause agitated is emerging from circumstances arising out of marital relationship. It is rightly observed by the Family Court that the alleged contract between the 1<sup>st</sup> respondent and the 1<sup>st</sup> appellant is only due to the marriage of the 1<sup>st</sup> respondent with the son of the 1<sup>st</sup> appellant. The entire transaction took place after the marriage. Therefore it is found that the dispute will squarely come within the purview of explanation (d) to section 7(1) of the Act.”*

11. The facts in **Janaki Amma** (supra) are very similar to that in the present case. In the instant case it is the father-in-law who agreed to assign the property in consideration of her money and gold received. Subsequently, in violation of the agreement, he assigned the property in favour of his daughter. In the above circumstance, it is to be held that the present O.P. also arose in the circumstances arising out of the marital relationship coming within the purview of Explanation (d) to Section 7(1) of the Family Courts Act.

12. It was further argued by the learned counsel for the petitioner that the 1<sup>st</sup> respondent has not produced any documents to prove the arrangement allegedly made between the petitioner and the 1<sup>st</sup> respondent.



13. In response to the above contention, the learned counsel for the 1<sup>st</sup> respondent relied upon the decision of a Division Bench of this Court in **Muhammed Davood and Another v. Hafsath and Another [2009 (4) KHC 853]**. In the above decision, the Division Bench held that generally in a transaction between spouses, there will be no documentary evidence. In paragraph 21, the Division Bench held as under:

“21.           xxx           xxx           xxx           xxx

*The transaction was between the spouses. A Court unless it is naive and hypertechnical should not in circumstances like this look for or insist on documentary evidence to prove the transaction. S.3 of the Evidence Act which must be reckoned as the bible of a Court of facts demands, that Courts must adopt the standards of a prudent person informed of all the realities of raw life. Such a prudent person would be an unworthy specimen of a prudent person, if he were to expect or insist on documentary proof to show the amount and ornaments handed over to the bride at the time of marriage or amount and ornaments that she carried when she returned home. That would be an artificial and irrational approach. Similarly when the marital tie is subsisting and the spouses are living together happily a request by the son-in-law to the father-in-law through the bride for money to meet his needs cannot also be expected to be in writing supported by documents. A prudent person cannot expect that there will be documents to prove such payments made by the father inlaw to his daughter/son inlaw. We are only looking at the broad probabilities and how artificial, irrational and improbable, it*



*would be for any one in the given circumstances to look for documentary evidence to prove the claim of the claimants.”*

14. Whether the 1<sup>st</sup> respondent will be able to succeed in proving her case is a matter to be decided by the Family Court after taking evidence in the case. At this stage, while considering the question of jurisdiction, we need look into the pleadings alone. As held by the Division Bench in the above decision, in a transaction between spouses and in-laws, especially when it occurred during the period in which they were in cordial terms and most probably at the time of marriage or immediately before the marriage, usually there will be no documents to prove the same. Merely because of the absence of any documents to substantiate the contentions of the 1<sup>st</sup> respondent in the OP, we cannot arrive at a conclusion regarding the merits of the case at this stage. It is a matter to be finally decided by the Family Court while disposing of the OP. While analysing the pleadings in the OP including the reliefs claimed by the 1<sup>st</sup> respondent, it is evident that the dispute between the parties arose in circumstances arising out of the marital relationship coming within the purview of Explanation (d) to Section 7(1) of the Family Courts Act.

Therefore, we do not find any irregularity or illegality in the



*O.P(FC).58/2024*

12

finding of the Family Court that the OP is maintainable and as such this OP (FC) is liable to be dismissed.

In the result, this OP(FC) is dismissed.

Sd/-  
ANU SIVARAMAN,  
JUDGE

Sd/-  
C. PRATHEEP KUMAR,  
JUDGE

sou.



APPENDIX OF OP (FC) 58/2024

PETITIONER EXHIBITS

- EXHIBIT P1 TRUE PHOTO COPY OF ORIGINAL PETITION DATED 25.01.2021 IN O.P NO 66/2021 ON THE FILES OF FAMILY COURT, MUVATTUPUZHA.
- EXHIBIT P2 TRUE PHOTO COPY OF COUNTER AFFIDAVIT DATED 19.09.2022 FILED BY THE PETITIONER/FIRST RESPONDENT IN O.P NO 66/2021 ON THE FILES OF FAMILY COURT, MUVATTUPUZHA.
- EXHIBIT P3 TRUE PHOTO COPY OF I.A NO 7/2023 IN O.P NO 66/2021, DATED 01.02.2023, ON THE FILES OF FAMILY COURT, MUVATTUPUZHA.
- EXHIBIT P4 TRUE PHOTO COPY OF COUNTER AFFIDAVIT DATED NIL FILED BY THE FIRST RESPONDENT.
- EXHIBIT P5 TRUE PHOTO COPY OF COMMON ORDER DATED 04.12.2023 IN I.A NO.6/2022 & I.A NO.7/2023 IN O.P NO.66/2021 ON THE FILES OF FAMILY COURT, MUVATTUPUZHA.