



2024/KER/21492

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

&

THE HONOURABLE MR. JUSTICE C.PRATHEEP KUMAR

WEDNESDAY, THE 20<sup>TH</sup> DAY OF MARCH 2024 / 30TH PHALGUNA, 1945

OP (FC) NO. 689 OF 2023

OP NO.1544 OF 2017 OF FAMILY COURT, THIRUVANANTHAPURAM

PETITIONER(S)/PETITIONER/11TH COUNTER-PETITIONER

PRADEESH,

AGED 37 YEARS

S/O. VIJAYAN, RESIDING AT PREETHA NIVAS, T.C.NO. 39/1717(5),

KURYATHI, MANACAUD P.O., THIRUVANANTHAPURAM., PIN -

695009

BY ADVS.

M.R.ANANDAKUTTAN

M.HEMALATHA

MAHESH ANANDAKUTTAN

M.J.SAJITHA

RESPONDENT(S)/COUNTER-PETITIONERS/PETITIONER & COUNTER-PETITIONERS

1 TO 10

1

S.M.SHEEBA RANI

W/O. AJAYAKUMAR, NOW RESIDING AT RETNA VILASAM, K.S.ROAD,

MUTTAKKAD, KOVALAM P.O., THIRUVANANTHAPURAM, FROM

NIDHIVETTIYAVILA VEEDU, KANJIRAMKULAM P.O.,

THIRUVANANTHAPURAM., PIN - 695527



- 2 M.R.AJAYAKUMAR  
S/O. JOSEPH VAIDYAR,, RESIDING AT NIDHIVETTIYA VEEDU,  
KANJIRAMKULAM, KANJIRAMKULAM P.O.,  
THIRUVANANTHAPURAM DISTRICT., PIN – 695524
- 3 T.C. PAUL  
S/O. CHACKO, RESIDING AT SREEVALSAM, V.P.NO. VIII/548(A),  
PIDARAM, VILAVOORKAL VILLAGE, VILAVOORKAL P.O.,  
THIRUVANANTHAPURAM DISTRICT., PIN – 695573
- 4 JOHN DAS D.R  
S/O. DASAYYAN,RESIDING AT DAS BHAVAN, PONGIL, VENPAKAL  
P.O., ATHIYANNOOR VILLAGE, THIRUVANANTHAPURAM TALUK &  
DISTRICT., PIN – 695123
- 5 OMANA T.R  
W/O. RAVEENDRAN, AMPADI, T.C.8/318, ALAPPURAM,  
THIRUMALA P.O., THIRUVANANTHAPURAM., PIN – 695006
- 6 ABHILASH  
S/O. RAVEENDRAN, AMPADI, T.C.8/318, ALAPPURAM,  
THIRUMALA P.O., THIRUVANANTHAPURAM., PIN – 695006
- 7 CEASER V.PILLAI  
S/O. VARKY PILLAI, RESIDING AT HOUSE NO. 39/2602, MALIYIL  
VEEDU, KARTHIKA DESOM, ERNAKULAM VILLAGE,  
KANAYANNOOR TALUK, ERNAKULAM DISTRICT., PIN – 682016
- 8 BABY RAJ  
S/O. RAMACHANDRAN, RESIDING AT KRISHNAVILASAM  
BUNGLOW, THANNIMOOD P.O. KOTTUKAL VILLAGE,  
NEYYATTINKARA TALUK, THIRUVANANTHAPURAM., PIN –  
695123
- 9 SREEJITH  
S/O. MADHAVAN, RESIDING AT RAMA NILAYAM, VENPAKAL P.O.,  
ATHIYANNOOR VILLAGE, NEYYATTINKARA TALUK,  
THIRUVANANTHAPURAM., PIN – 695123



- 10      JOBY ELDO  
          S/O. ELDO KUNJU, RESIDING AT THURUTHUMMEL, VENGANOOR  
          VILLAGE, KOVALAM P.O., THIRUVANANTHAPURAM., PIN –  
          695527
- 11      GEETHA JOSTHOTTAM  
          D/O. JOSEPH THOTTAM, RESIDING AT SREEVALSAM,  
          V.P.VIII/548(A), PIDARAM, PEYAD P.O., VILAVOORKAL VILLAGE,  
          NEYATTINKARA TALUK, THIRUVANANTHAPURAM., PIN –  
          695573
- BY ADV R.T.PRADEEP

THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION ON  
14.3.2024, THE COURT ON 20.03.2024 DELIVERED THE FOLLOWING:

**ANU SIVARAMAN & C.PRATHEEP KUMAR, JJ.**  
-----OP (FC). 689 of 2023  
-----Dated : 20<sup>th</sup> March, 2024**JUDGMENT**C.Pratheep Kumar, J.

1. The petitioners herein are respondents 2, 9, 10, 11 and 5 in O.P.1544/2017 on the file of the Family Court, Thiruvananthapuram. They are challenging Ext.P6 order passed by the Family Court in I.A.3/2023, 5/2023 and 6/2023 holding that the above OP is maintainable before the Family Court. (For the purpose of convenience, the parties are herein referred to as per their rank in Ext.P1 Original Petition.)
2. Ext.P1 Original Petition was filed by the wife against her husband namely the 1<sup>st</sup> respondent and ten other respondents who are assignees of the properties scheduled in the petition. She preferred the above OP praying for realization of a sum of Rs.5 Lakhs, return of 75 sovereigns of gold ornaments, a decree for setting aside Exts.P4 to P6 sale deeds as well as subsequent sale deeds namely Exts.P7 to P15. The petitioner and 1<sup>st</sup> respondent got married on 26.12.2002 and in that wedlock a child was born on 23.12.2003. Subsequently, the marital relationship between them strained. According to the petitioner, she is the title holder of petition C schedule property consisting of 4 acre 20 cents which she obtained as per



partition deed No.2230 of 1991.The 1<sup>st</sup> respondent started harassing her and compelled her to sell a portion of C schedule property. The 1<sup>st</sup> respondent along with his sisters and mother induced her to sell ten cents of property from the C schedule, promising to assign another ten cents of property in her favour, from their family property. Accordingly, she was taken to the Sub Registrar's office and she had signed in a sale agreement for selling ten cents of property from the C Schedule. She never went to the Sub Registrar's office thereafter. Subsequently it was revealed that the 1<sup>st</sup> respondent produced another lady before the Sub Registry and executed Exts.P3 to P6 sale deeds assigning the C schedule property in favour of respondents 1 and 2. Thereafter the 1<sup>st</sup> respondent assigned the above properties in favour of respondents 3 to 11 as per Exts.P7 to P15 documents. According to the petitioner, the 1<sup>st</sup> respondent along with other respondents colluded together, forged the above documents by impersonation with the intention to snatch away her property. In that respect, a criminal case was registered against the 1<sup>st</sup> respondent at her instance. It is also alleged that the 1<sup>st</sup> respondent appropriated her 75 sovereigns of gold ornaments as well as patrimony of Rs.5 Lakhs. It was in the above context that she filed the OP for realisation of the patrimony of Rs.5 Lakhs, return of 75 sovereigns of gold ornaments and also for setting aside the above documents.



3. The contention taken by respondents 2 to 11 is that they are bona fide purchasers of the schedule properties. Further, according to them, the petitioner in collusion with the 1<sup>st</sup> respondent, filed the suit to defeat their rights. They would further contend that since the main reliefs are against respondents 2 to 11, who are not parties to the marriage, the Family Court has no jurisdiction to entertain the OP. Challenging the maintainability of the OP, respondents 2, 9 and 10 filed I.A.3/2023. I.A.5/2023 was filed by the 11<sup>th</sup> respondent and I.A.6/2023 was filed by the 5<sup>th</sup> respondent. As per the impugned order dated 20<sup>th</sup> September 2023, the Family Court found that the OP is maintainable before it. Aggrieved by the above order, the respondents 2, 9 and 10 in the OP filed this petition.

4. Now the point that arise for consideration is the following :-

Whether the Family Court has jurisdiction to entertain the OP ?

5. Heard both sides.

6. The point :- The petitioner is the wife of the 1<sup>st</sup> respondent. Out of the 5 main reliefs claimed in the OP, reliefs A and B are for return of patrimony and gold from the 1<sup>st</sup> respondent. With regard to the jurisdiction of the Family Court in respect of those two reliefs, there is no dispute. Since Exts.P4 to P6 are executed in favour of the 1<sup>st</sup> respondent, the prayer to set aside those documents also will come within the jurisdiction of the Family Court. Respondents 2 to 11 questioned the jurisdiction of the Family Court



to entertain the reliefs claimed against them, namely, the jurisdiction to set aside the sale deeds Ext.P3 and P7 to 15 executed in their favour. It was argued on behalf of the respondents that the respondents obtained the properties as per various sale deeds starting from the year 2005, took possession of the properties and effected valuable improvements. Further, according to them, the petitioner is aware of those facts and in spite of that, she has chosen to file this OP only in the year 2017 in collusion with her husband namely, the 1<sup>st</sup> respondent. On the other hand, the learned counsel for the petitioner would argue that there is no such collusion and that the petitioner and the respondent are living separately since 13.6.2015 and in respect of the creation of the fraudulent documents, a criminal case is pending against the 1<sup>st</sup> respondent.

7. It was argued on behalf of the respondents that if the reliefs claimed in the OP are filed before the other Court, huge amount of court fee is to be paid and that, in order to save the same, she approached the Family Court. He has also relied upon the decision of the Hon'ble Supreme Court in **Satheedevi v. Prasanna, 2010 (2) KLT 642**, wherein it is held that for cancellation of documents, which creates any right title or interest in immovable property, the Court fee is to be computed on the value of the property for which the document was executed.
8. Explanation (c) and (d) to Section 7(1) of the Family Court Act, which



are relevant here, are extracted below for reference.

**7. Jurisdiction-**

**Explanation-** *The suit and proceedings referred to in this sub-section are suits and proceedings of the following nature namely-*

*(a).....*

*(b).....*

*(c) a suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them;*

*(d) a suit or proceeding for an order or injunction in circumstances arising out of a marital relationship;*

9. Explanation (c) deals with suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them. In this case, the 1<sup>st</sup> and 2<sup>nd</sup> prayers are for return of patrimony and gold belonging to the petitioner from the 1<sup>st</sup> respondent namely her husband and as such the above reliefs will definitely fall within the Explanation (c) to Section 7(1). Relief D in respect of Exts.P4 to P6 documents executed in favour of the 1<sup>st</sup> respondent will also come within the purview of Explanation (c) to Section 7(1). Relief C claimed in the OP is for setting aside Ext.P3 sale deed which is purportedly executed by the petitioner in favour of the 2<sup>nd</sup> respondent. Relief D includes prayer to set aside Exts.P7 to P15 documents executed by the 1<sup>st</sup> respondent in favour of respondents 2 to 11. In this context it is to be noted that Exts.P3 to P6 are the prior





documents of Exts.P7 to P15. If Exts.P3 to P6 documents are set aside, automatically it affects the validity of Exts.P7 to P15 documents also. In other words, an effective decree cannot be passed in respect of Exts.P7 to P15, without deciding the validity of Exts.P3 to P6. Since the Family Court alone has jurisdiction to deal with the prayer for setting aside Ext.P3 to P6 documents, and the decision thereon has direct impact on the validity of Exts.P7 to P15 documents, the same court has to consider the relief D in full. In another words, the validity of Exts.P3 to P17 documents are to be decided by the very same Court as those transactions are directly connected to each other and the validity of one set of documents depends on the validity of the other set of documents.

10. In the decision in **Suprabha v. Sivaraman, 2006 KHC 228**, a Division Bench of this Court while interpreting the scope of the word 'circumstances' coming within Explanation (d) to S.7(1) of the Family Courts Act held that:

*“.....The meaning of the word “circumstances” as found in Law Lexicon and Black’s Law Dictionary was referred to and it was found that it will include those particulars which closely precedes, surrounds, accompanies or follows a marital relationship. It was found that the main requirement was that such circumstances must have a direct bearing on marriage, was also found that “circumstances arising out of marital relationship” means not only those occurrences which transpired*



*during marital life, but also include such circumstances which led to the marriage, which developed thereafter, and those such followed as a consequence. It was also found that if the intention of the legislature was to take in only those occurrences which took place during a marital relationship, there was no necessity to use the word 'circumstances'. The inclusion of the word 'circumstances' in the provision was found to be quite significant which was done to include all such circumstances surrounding, preceding and closely following a marital relationship.”*

11. The specific case of the petitioner is that her husband namely, the 1<sup>st</sup> respondent had transferred her entire properties in favour of the other respondents by playing fraud, misrepresentation, impersonation and cheating. By virtue of Explanation (c) to Section 7(1) of the Family Court Act, the above issue as to whether the 1<sup>st</sup> respondent transferred her properties in the name of other respondents by playing fraud, misrepresentation, impersonation and by cheating, can be decided only by the Family Court. Since the dispute between the petitioner and the 1<sup>st</sup> respondent has direct bearing on the title of respondents 2 to 11, it is to be held that the relief for setting aside Exts.P3 to P17 documents are so connected that the Family Court alone can decide the same. In other words, the relief claimed by the petitioner as against respondents 2 to 11 cannot be separately tried by a Civil Court when the dispute between the petitioner and the 1<sup>st</sup> respondent is decided by the Family Court. Therefore, it can be seen that the relief in respect of the schedule properties claimed



by the petitioner against respondents 1 to 11 are interconnected and as such, it is a suit or proceeding in circumstances arising out of a marital relationship coming within the Explanation (d) to Section 7(1) and as such, the Family Court alone has jurisdiction to entertain the same.

12. In this context, it is also to be noted that though the OP was filed in the year 2017, the respondents have filed the maintainability petition only in the year 2023, when the case was posted for evidence and after the petitioner filed proof affidavit and documents supporting her case. In the counter the petitioner claimed that in order to substantiate her case, at her instance, the disputed signatures and thumb impressions in the disputed documents were sent for examination to the Forensic Science laboratory and a report was received to the effect that the disputed signatures and thumb impressions do not belong to the petitioner. The petitioner has produced the FSL report along with her proof affidavit and the maintainability petitions filed by the respondents are to be appreciated in the above context.

13. In the counter filed by the petitioner to the maintainability petitions, she had even disclosed the name of the lady who was allegedly brought by the 1<sup>st</sup> respondent before the Sub Registry for personation. The pendency of the criminal case against the 1<sup>st</sup> respondent and the FSL report in favour of the petitioner substantiates the contention of the petitioner that there is



no collusion between the petitioner and the 1<sup>st</sup> respondent as alleged by the respondents.

14. In the above circumstances, it is to be held that the impugned order of the Family Court holding that the Family Court has jurisdiction to entertain the OP is perfectly valid and liable to be sustained. We do not find any irregularity or illegality in the impugned order passed by the Family Court and as such this OP is liable to be dismissed.

In the result, the OP is dismissed.

Sd/-

**Anu Sivaraman, Judge**

Sd/-

**C.Pratheep Kumar, Judge**

APPENDIX OF OP (FC) 689/2023**EXHIBITS**

- Exhibit-P1** A TRUE COPY OF THE ORIGINAL PETITION IN O. P. NO. 1544 OF 2017 BEFORE THE FAMILY COURT THIRUVANANTHAPURAM DATED 31-07-2017 WITH ENGLISH TRANSLATION.
- Exhibit-P2** A TRUE COPY OF THE WRITTEN STATEMENT DATED 17-07-2018 IN O. P. NO. 1544 OF 2017 BEFORE THE FAMILY COURT THIRUVANANTHAPURAM FILED BY THE PETITIONER
- Exhibit-P3** A TRUE COPY OF THE JUDGMENT DATED 03-06-2019 IN O.P. (F.C) NO. 442 OF 2018 OF THIS HONOURABLE COURT
- Exhibit-P4** A TRUE COPY OF I. A. NO. 5 OF 2023 IN O. P. NO. 1544 OF 2017 BEFORE THE FAMILY COURT AT THIRUVANANTHAPURAM DATED 15-06-2023
- Exhibit P5** A TRUE COPY OF THE OBJECTION FILED BY THE 1ST RESPONDENT TO THE I. AS DATED 10-07-2023 IN O. P. NO. 1544 OF 2017 OF THE FAMILY COURT, THIRUVANANTHAPURAM WITH ENGLISH TRANSLATION
- Exhibit-P6** A TRUE COPY OF THE COMMON ORDER IN I. A. NOS.3, 5 AND 6 OF 2023 DATED 20-09-2023 OF THE FAMILY COURT, THIRUVANANTHAPURAM