

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

&

THE HONOURABLE MRS. JUSTICE M.R.ANITHA

WEDNESDAY, THE 06TH DAY OF JANUARY 2021 / 16TH POUSHA, 1942

OP (FC).No.1 OF 2021

AGAINST THE ORDER/JUDGMENT IN I.A.NO.4612/2019 IN OP 1948/2019
DATED 11-11-2020 OF FAMILY COURT,THRISSUR

PETITIONER/PETITIONER:

HEMALATHA
AGED 60 YEARS
D/O. THERAMBIL DHARMATHEERTHAN, THAIKKULAM VILLAGE,
EDASSERY DESOM, EDASSERY P.O, CHAVAKKAD TALUK,
THRISSUR DISTRICT, PIN-680 569.

BY ADVS.
SHRI.JAWAHAR JOSE
SMT.CISSY MATHEWS
SRI.JAISON ANTONY

RESPONDENT/RESPONDENT:

BHUVANADAS
AGED 60 YEARS
S/O. PALLITHARA KUNJAKKAN, CHENTHRAPPINNY VILLAGE,
CHENTHRAPPINNY P.O, PERUMBADAPPU DESOM, KODUNGALLUR
TALUK, THRISSUR DISTRICT, PIN-680 569

THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION ON
06.01.2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 6th day of January 2021

M.R. Anitha, J.

This original petition has been filed to set aside Ext.P1 order in I.A.No.4612/2019 in O.P.No.1948/2019, to the extent of refusing injunction with respect to plaint 'A' schedule property.

2. O.P.No.1948/2019 was filed seeking for a declaration that the petitioner is the absolute owner with respect to the properties described as item Nos.A, B, C and D in the petition schedule and it has been purchased in the name of the respondent with the funds of the petitioner and also to declare that respondent has no right to alienate or create any encumbrance with respect to A, B, C and D schedule properties. A declaration is further sought to declare that the respondent is bound to pay a sum of Rs.22,70,500/- to the petitioner as the said amounts were advanced by the petitioner to the respondent.

3. Along with the original petition, petitioner filed two interlocutory applications as I.A.Nos.4612/2019 to restrain the respondent from alienating or creating any encumbrance with respect to A, B, C and D schedule properties and I.A.No.

4613/2019 to attach the properties scheduled as E, F and G in the original petition, for security, with respect to the claim amount of Rs.22,70,500/-. After hearing both sides, the trial court confirmed the order of injunction with respect to B, C and D schedule properties and injunction was refused with respect to 'A' schedule property. Attachment was confined to plaint 'E' schedule property alone and vacated the order of attachment originally granted with respect to 'F' and 'G' schedule properties.

4. Now the petitioner is aggrieved by the lifting of order of injunction with respect to 'A' schedule property. Hence this original petition has been filed with a limited prayer to grant injunction with respect to plaint 'A' schedule property.

5. Heard the learned counsel for the petitioner.

6. On going through the impugned order, it is seen that the respondent-husband had filed a detailed counter to the petition filed by the petitioner regarding investment of money by her for purchasing A, B, C and D schedule properties. The allegation that the title deeds with respect to the properties have been created in favour of the respondent by misrepresentation and fraud is also denied. The allegation

regarding the entrustment of money is also stoutly denied by the respondent and he has got a specific contention that while working at abroad he transferred all his earnings to the petitioner and she misused the same and he sought for a dismissal of the petition.

7. The impugned order seems to have been passed on a close evaluation of the rival contentions of the parties. Certified copies of the title deeds with respect to plaint A, B, C and D schedule properties have been produced as Exts.A1 - A4 respectively and Exts.A5 - A7 are the certified copies of the title deeds with respect to plaint E,F and G schedule properties.

8. It has been discussed in paragraph No.12 of the impugned order that admittedly plaint A schedule property originally belonged to the father of the respondent and according to the petitioner there was a family partition in the respondent's family during 2000 and at that time the respondent's father had promised to give the 'A' schedule property to the respondent on condition that he would give Rs.1 lakh to his sisters as their share in the family property and thereupon the respondent represented that the said property can be obtained in the joint names of the petitioner and the

respondent. The respondent managed to take Rs.1 lakh from the savings of the petitioner for getting the title in respect of the A schedule property, is the allegation. Ext.A1 is the certified copy of the conveyance executed by the petitioner's father in favour of the respondent on 22.09.2000. In that document it has been stated that the consideration of Rs.1 lakh paid by the respondent is intended to be given to the sisters of the respondent. So it was taken into account by the learned Family Court Judge that though Ext.A1 is styled as a sale deed in fact it is a family settlement deed. Hence it was concluded that the consideration shown in that document can only be considered as a consideration among the members in the respondent's family. So the court below was of the prima facie view that the denial of title of respondent with respect to the plaint A schedule property is not genuine. The fact that the petitioner did not produce any material to show that she had necessary funds with her during the relevant time was also taken note of.

The respondent had been working abroad even before the solemnisation of marriage. So the court below was of the view that the contention that he himself paid the amount of Rs.1 lakh shown in the document to his sisters is quite probable and

genuine. So taking into consideration the totality of the facts and circumstances the court below was of the view that the petitioner has not succeeded in bringing out a prima facie case with respect to her claim over 'A' schedule property. So we are of the view that a well reasoned order has been passed by the learned Family Court in refusing to grant injunction with respect to 'A' schedule property. We do not find any illegality or impropriety in the impugned order passed by the learned Family Court, Thrissur warranting any interference at the instance of this Court. Hence the writ petition is found to be devoid of any merit and hence dismissed in limine.

Sd/-

K.VINOD CHANDRAN

JUDGE

Sd/-

M.R.ANITHA

JUDGE

SHG

APPENDIX

PETITIONER'S/S EXHIBITS:

EXHIBIT P1

**TRUE COPY OF THE ORDER DATED 11.11.2020 IN
I.A.NO. 4612/2019 IN O .P. NO. 1948/2019 ON
THE FILES OF THE FAMILY COURT, THRISSUR.**