

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

WEDNESDAY, THE 3RD DAY OF JANUARY 2024 / 13TH POUSHA, 1945

OP(CRL.) NO. 915 OF 2023

MC 303/2018 OF FAMILY COURT, IRINJALAKUDA

PETITIONERS :

- 1 THULASI,
AGED 32 YEARS, W/O. NADUMURI SINESH KUMAR,
D/O CHULLIPARAMBIL ASHOK KUMAR,
KARAYAM PADAM, DESOM, VARANTHARPILLY VILLAGE
AND CHALAKUDY TALUK TRISSUR DISTRICT,
PIN - 680 303
- 2 SREE BADHRA (MINOR) ,
AGED 7 YEARS ,
REPRESENTED BY THE MOTHER AND GUARDIAN THULASI ,
AGED 32 YEARS, W/O NADUMURI SINESH KUMAR,
D/O CHULLIPARAMBIL ASHOK KUMAR,
KARAYAM PADAM, DESOM, VARANTHARPILLY VILLAGE
AND CHALAKUDY TALUK, TRISSUR DISTRICT,
PIN - 680 303

BY ADV T.N.MANOJ

RESPONDENTS :

- 1 SINESH KUMAR,
AGED 42 YEARS ,
S/O NADUMURI SREENIVASAN (LATE) ,
KODALI DESOM PADY POST, MATTATHUR VILLAGE,
TRISSUR DISTRICT, PIN - 680 699
- 2 THE VILLAGE OFFICER,
MATTATHUR VILLAGE OFFICE,
MATTATHUR POST, TRISSUR DISTRICT,
PIN - 680 684
- 3 THE DEPUTY TAHSILDHAR,
REVENUE RECOVERY, TALUK OFFICE CHALAKUDY,
TRISSUR DISTRICT, PIN - 680 307

BY ADVS.
LINDONS C.DAVIS
E.U.DHANYA (K/672/2006)
N.S.SHAMILA (K/222/2016)
CHINJU P. JOYIES (K/894/2016)

BY SRI.NOUSHAD K.A., PUBLIC PROSECUTOR

THIS OP (CRIMINAL) HAVING COME UP FOR ADMISSION ON
03.01.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

BECHU KURIAN THOMAS, J.

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O.P.(Crl.) No.915 of 2023

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Dated this the 3rd day of January, 2024

JUDGMENT

The first respondent has refused to provide maintenance to the petitioners - his wife and daughter respectively. In proceedings under Section 125 of the Code of Criminal Procedure, 1973, interim maintenance was ordered by the court. Since even the said interim maintenance was not paid, a petition was filed for recovery of the amounts so ordered. The Family Court thereafter issued a distress warrant for recovery as per Ext.P3. However, the Village Officer failed to file a report before the Family Court evidencing the service of notice of distress warrant even though it was served on the first respondent and thus, he continues to evade payment.

2. Due to the failure of respondents 2 and 3 in filing appropriate reports before the Family Court, the case is getting unnecessarily adjourned and it was in such circumstances that this original petition was filed seeking directions to initiate steps for recovery of the amounts due to the petitioners by resorting to coercive measures, including issue of arrest warrant.

3. On 27.11.2023, this Court directed respondents 2 and 3 to file report before the Family Court regarding the outcome of the service of

notice of distress warrant and also directed a copy of the said report to be placed before this Court as well.

4. The Village Officer has filed a report stating that the first respondent has 1/4th undivided share in a property situated in Survey No.408/2 of Mattathur Village having an extent of 0.0269 Hectares along with a residential building on it with four Areacanut trees and four Jack fruit trees.

5. Sri.T.N.Manoj, the learned counsel for the petitioner pointed out that the Family Court has not been able to proceed and finalise the issue relating to recovery of amounts already awarded as interim maintenance. It is further submitted that now that the Village Officer has identified the properties from which amounts can be recovered, the Family Court ought to be directed to finalise the proceedings.

6. The learned counsel for the first respondent, however submitted that there is an out of court settlement arrived at between the parties and within few weeks, appropriate applications will be filed in court indicating the settlement.

7. Having considered the submissions of the respective learned counsel, I am of the view that the Family Court ought to proceed with M.P.No.486 of 2023 and M.P.No.487 of 2023 filed in M.C.No.303 of 2018, as expeditiously as possible, in a time bound manner, especially having regard to the report filed before this Court on 20.12.2023 pointing out the existence of undivided share for the first respondent in an immovable

property.

8. Therefore the proceedings for recovery of amounts due under the interim maintenance already awarded shall be finalised, as expeditiously as possible, at any rate, within a period of two months from the date of receipt of a copy of this judgment. Since this Court has already observed in **Pinchu Chandran v. Arya J. [2023 KHC Online 825]** that the Family Court has the power to strike off pleadings in a proceeding under Section 125, if there is any failure to pay the interim maintenance, the petitioner will be at liberty to bring the said judgment to the notice of the Family Court to proceed in accordance with law.

The original petition is disposed of as above.

Sd/-

BECHU KURIAN THOMAS, JUDGE

RKM

APPENDIX OF OP(CRL.) 915/2023

PETITIONERS' EXHIBITS :

- Exhibit.P1 THE TRUE COPY OF THE ORDER DATED 27/11/ 2021 IN MP 303 OF 2021 IN MC 303 OF 2018 OF THE FAMILY COURT AT IRINJALAKUDA
- Exhibit.P2 THE TRUE COPY THE PETITION MP486 OF 2022 FILED BY THE PETITIONERS BEFORE THE FAMILY COURT IRINJALAKUDA IN MC303/2018 UNDER SECTION 128 OF THE COURT OF CRIMINAL PROCEDURE, AND ENGLISH TRANSLATION.
- Exhibit.P3 THE TRUE COPY OF THE DISTRESS WARRANT DATED 15 /12/2022 ISSUED BY THE FAMILY COURT IRINJALAKUDA AGAINST THE 1ST RESPONDENT.
- Exhibit.P4 THE TRUE COPY OF THE NOTICE EVIDENCING SERVICE OF DISTRESS WARRANT ON THE FIRST RESPONDENT EVIDENCING THE ENDORSEMENT MADE BY THE FIRST RESPONDENT DT. 18/3/2023 AND ENGLISH TRANSLATION.
- Exhibit.P5 THE TRUE COPY OF THE INFORMATION OBTAINED TO THE 1ST PETITIONER FROM THE VILLAGE OFFICE MATTATHUR DATED 17/10/2023 UNDER THE RIGHT TO INFORMATION ACT, AND ENGLISH TRANSLATION.
- Exhibit.P6 THE TRUE COPY THE PETITION MP 487/2023 FILED BY PETITIONERS IN MC 303/2018 BEFORE THE FAMILY COURT AT IRINJALAKUDA, AND ENGLISH TRANSLATION.
- Exhibit.P7 THE TRUE COPY OF THE INFORMATION DATED 13/11/2023 OBTAINED TO THE 1ST PETITIONER FROM THE OFFICE OF THE DEPUTY TAHSILDHAR REVENUE RECOVERY CHALAKUDY, AND ENGLISH TRANSLATION.