

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

&

THE HONOURABLE MRS. JUSTICE M.B. SNEHALATHA

THURSDAY, THE 5<sup>TH</sup> DAY OF SEPTEMBER 2024 / 14TH BHADRA, 1946

OP (FC) NO. 517 OF 2024

AGAINST THE ORDER DATED 02.07.2024 IN OP NO.393 OF 2024 OF  
FAMILY COURT, THRISSUR

PETITIONERS/RESPONDENTS/RESPONDENTS:

1 VINEESH.P.V, AGED 38 YEARS  
S/O.N.VIDYADARAN (LATE), PANAKKAL LAKSHMI BHAVAN,  
MUTHIRAPPADAM, THAIKKATTUKARA.PO, CHOORNIKKARA VILLAGE,  
ALUVA TALUK, ERNAKULAM, PIN - 683106

2 PRASANNAKUMARI, AGED 74 YEARS  
W/O.N.VIDYADARAN (LATE), PANAKKAL LAKSHMI BHAVAN,  
MUTHIRAPPADAM, THAIKKATTUKARA.PO, CHOORNIKKARA VILLAGE,  
ALUVA TALUK, ERNAKULAM, PIN - 683106

LEKSHMI S.SEKHER  
K.J.SUNIL  
FEMY M.ANTONY  
S.SUNIL KUMAR (PALAKKAD)

RESPONDENTS/PETITIONERS/PETITIONERS:

1 ANJU.P.ARJUNAN, AGED 34 YEARS  
D/O.P.V.ARJUNAN (LATE), PUTHUR HOUSE, KAIPARAMBU.PO,  
KAIPARAMBU VILLAGE, THRISSUR, PIN - 680546

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BY ADV PREMCHAND M

THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION ON  
05.09.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**JUDGMENT****Devan Ramachandran, J.**

Going by the scheme of the Family Courts Act, 1984 and the Rules thereunder, when an Original Petition/application is preferred by a party, Family Courts are empowered to decide, within the ambit of Rule 4A(2) of the Family Courts Rules (for short "Rules"), whether there is a chance of settlement; and if so, to issue notice to the parties under Form No.8, requiring them to be present before it to consider such course. At this stage, because of the inhibition under the Rules itself, a copy of the Original Petition/application is not given to the other side and this is reserved to be done once the mediation/settlement fails. In that event, the Family Courts are expected to issue notice under Rule 4A(5) of the Rules, which shall have the Original Petition also annexed to it; and then the matter will have to be decided on its merits.

2. We have begun the judgment with the afore preface because, the specific case of the petitioners is that they received a notice in Form 8 - which is to say under the ambit of Rule 4A(2) of the Rules, producing the same as Ext.P1 - but that the learned Family Court has not yet issued any order asking the parties to



mediate, nor has it issued to them a summons under 4A(5) of the Rules, appending the Original Petition. They assert that, therefore, they are now under a complete loss as to what the claim against them is; but that, in the meanwhile, the Trial Court has issued the impugned Ext.P6 order, on the application of the respondents herein, appointing an Advocate Commissioner to take custody of the gold ornaments in the bank locker. They say that they apprehend that the same will now be handed over to her, in spite of the fact that no proceedings as afore has been even initiated.

3. Sri.Lekshmi S.Sekher – learned counsel for the petitioners, argued that the infraction of the procedural requirements as afore is now prejudicing her clients very intently because, they would be left without any remedy, including to contend that the gold ornaments in the locker are theirs or otherwise, because they do not even have a copy of the Original Petition as of now, thus being incapacitated from filing a counter pleading in their defense. She, therefore, prayed that Ext.P6 be set aside.

4. The afore submissions were, however, refuted by Sri.Premchand, saying that his clients have filed I.A.No.2/2024



seeking the appointment of an Advocate Commissioner to inspect the joint locker, which has been allowed; and that this was necessary because, otherwise, the petitioners herein would have taken away the same and misappropriated it. He pointed out that the Commissioner has identified the items and has filed a report; and that it is only thereafter, that the learned Trial Court has issued Ext.P6 order, allowing his clients to be in custody of the same as an interim measure. Sri.Prem chand then asserted that the entire gold in the bank locker belongs to his client; and that the petitioners do not even have a whispering claim that it is theirs. He, therefore, prayed that Ext.P6 be left uninterdicted.

5. Smt.Lekshmi S.Sekher, however, responded to the afore assertion of Sri.Premchand, that the gold in the locker has not been claimed by her clients, saying that such opportunity has not even arisen because, he is yet to receive the Original Petition, to be able to file a counter statement in contest.

6. We notice from the impugned order - as submitted by Sri.Premchand - that an Advocate Commissioner had been earlier appointed, who visited the bank locker and prepared an inventory of the gold ornaments therein. The learned Court has, thereupon, only directed the first respondent herein to file an affidavit



specifying the items of gold that are hers; and she has been given an opportunity to do so within the time frame fixed therein.

7. It is at this stage that the petitioners herein have approached this Court with the apprehension that the learned Family Court may allow the gold ornaments to be so specified by the respondents herein, to be released to her.

8. We must say upfront that if the facts stated by Smt.Lekshmi S.Sekher as afore, then certainly, the learned Family Court must modulate its proceedings, so as to bring it in conformity with the statutory requirements. Again, if as stated by the petitioners, they have only received Ext.P1 notice under Form 8 as per Rule 4A(2) of the Rules, then it is for the learned Trial Court first decide whether the parties should be sent for mediation; and if not, or in the alternative if such mediation fails, to issue summons to the respondents under Form 5, as per Rule 4A(5) of the "Rules", and then proceed to decide the matter.

9. Of course, in the peculiar circumstances presented, perhaps, the learned Trial Court was without error in having deputed an Advocate Commissioner to inspect the bank locker and to make an inventory of the gold items therein, since it is possible that, otherwise, the petitioners could have intervened and



removed the same; but any further proceedings thereafter can be done only after following the statutory proceedings.

10. Since the gold ornaments have now been already traced by the Advocate Commissioner and since an inventory has also been prepared and produced, we see no reason for the parties to be prejudiced, if we direct the learned Family Court to act as per the statutory prescriptions noticed above.

11. In the afore circumstances, we allow this Original Petition and direct the learned Family Court to take any further action pursuant to Ext.P6, including for the release of the gold ornaments, only after following the statutory procedure as mentioned above and after affording necessary opportunity to both sides.

We however clarify that we have not entered into the merits of any of the rival contentions relating to the claim; and that all of them are left open to be decided appropriately by the learned Family Court in due course.

**Sd/- DEVAN RAMACHANDRAN**

**JUDGE**

**Sd/- M.B. SNEHALATHA**

**JUDGE**

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**APPENDIX OF OP (FC) 517/2024****PETITIONER EXHIBITS**

<b>Exhibit P1</b>	<b>TRUE COPY OF THE FORM-8 NOTICE ISSUED TO PETITIONER NO-1 IN OP NO-393/2024 OF HONBLE FAMILY COURT THRISSUR</b>
<b>Exhibit P1(a)</b>	<b>TRUE COPY OF THE FORM-8 NOTICE ISSUED TO PETITIONER NO-2 IN OP NO-393/2024 OF HONBLE FAMILY COURT THRISSUR</b>
<b>Exhibit P2</b>	<b>TRUE COPY OF THE INTERIM APPLICATION AS IA NO-2/2024 IN OP NO-393/2024 OF HONBLE FAMILY COURT THRISSUR DATED 28.02.2024</b>
<b>Exhibit P3</b>	<b>TRUE COPY OF THE COMMISSION REPORT IN IA NO-2/2024 IN OP NO-393/2024 OF HONBLE FAMILY COURT THRISSUR DATED 30.04.2024</b>
<b>Exhibit P4</b>	<b>TRUE COPY OF THE IA NO-3/2024 IN OP NO-393/2024 OF HONBLE FAMILY COURT THRISSUR DATED 10.05.2024</b>
<b>Exhibit P5</b>	<b>TRUE COPY OF THE OBJECTION FILED BY THE PETITIONERS IN IA NO-3/2024 IN OP NO-393/2024 OF HONBLE FAMILY COURT THRISSUR DATED 25.06.2024</b>
<b>Exhibit P6</b>	<b>TRUE COPY OF THE ORDER IN IA NO-3/2024 IN OP NO-393/2024 OF HONBLE FAMILY COURT THRISSUR DATED 02.07.2024</b>
<b>Exhibit P7</b>	<b>TRUE COPY OF THE AFFIDAVIT FILED BY THE RESPONDENT NO-1 IN IA NO-3/2024 IN OP NO-393/2024 OF HONBLE FAMILY COURT THRISSUR DATED 06.07.2024</b>
<b>Exhibit P8</b>	<b>TRUE COPY OF THE AFFIDAVIT FILED BY THE RESPONDENT NO-1 IN IA NO-3/2024 IN OP NO-393/2024 OF HONBLE FAMILY COURT THRISSUR DATED 09.07.2024</b>
<b>Exhibit P9</b>	<b>TRUE COPY OF THE OBJECTION FILED BY THE</b>



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PETITIONERS IN IA NO-3/2024 IN OP NO-  
393/2024 OF HONBLE FAMILY COURT THRISSUR  
DATED 17.07.2024

**Exhibit P10**

TRUE COPY OF THE B-DIARY PROCEEDINGS IN  
IA NO-3/2024 IN OP NO-393/2024 OF HONBLE  
FAMILY COURT THRISSUR

**Exhibit P11**

TRUE COPY OF THE ADVOCATE COMMISSIONER  
NOTICE ALONG WITH TYPED COPY IN IA NO-  
3/2024 IN OP NO-393/2024 OF HONBLE FAMILY  
COURT THRISSUR DATED 05.08.2024

**Exhibit P12**

TRUE COPY OF THE JUDGMENT IN OPFC NO-  
502/2024 OF HONBLE HIGH COURT OF KERALA  
DATED 05.08.2024

**Exhibit P13**

TRUE COPY OF THE B-DIARY PROCEEDINGS IN  
IA NO-2/2024 IN OP NO-393/2024 OF HONBLE  
FAMILY COURT THRISSUR