



2024:KER:81665

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

&

THE HONOURABLE MRS. JUSTICE M.B. SNEHALATHA

MONDAY, THE 4TH DAY OF NOVEMBER 2024 / 13TH KARTHIKA,

1946

OP (FC) NO. 541 OF 2024

OP NO.2643/2023, FAMILY COURT, THIRUVANANTHAPURAM

PETITIONER/PETITIONER/PETITIONER IN IA 2/23 & R1 IN
IA 3/23

GREESHMA P.G, AGED 33 YEARS,
W/O. PRASANTHKUMAR P.S, VIHAR, KALLIYOOR P.O.,
KALLIYOOR VILLAGE, THIRUVANANTHAPURAM TALUK,
THIRUVANANTHAPURAM DISTRICT, PIN - 695042.

BY ADVS. RAJITHA V.K
P.ANOOP (MULAVANA)

RESPONDENTS/RESPONDENTS/RESPONDENTS IN IA 2/23 AND
PETITIONER AND RES 2 TO 5 IN IA 3/23:

- 1 PRASANTHKUMAR P.S
S/O. PRABHAKARAN P.S, KOCHUVEEDU,
ELAVINVILA, KAKKAMoola,
KALLIYOOR P.O.,
KALLIYOOR VILLAGE,
THIRUVANANTHAPURAM TALUK AND DISTRICT.,
PIN - 695042



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- 2 PRABHAKARAN K, AGED 66 YEARS
KOCHUVEEDU, ELAVINVILA, KAKKAMoola,
KALLIYOOR P.O., KALLIYOOR VILLAGE,
THIRUVANANTHAPURAM TALUK AND DISTRICT,
PIN - 695042
- 3 SANTHA PRABHAKARAN, AGED 60 YEARS
KOCHUVEEDU, ELAVINVILA, KAKKAMoola,
KALLIYOOR P.O., KALLIYOOR VILLAGE,
THIRUVANANTHAPURAM TALUK AND DISTRICT,
PIN - 695042
- 4 PRASANTHIKUMARI P.S, AGED 35 YEARS
KOCHUVEEDU, ELAVINVILA, KAKKAMoola,
KALLIYOOR P.O., KALLIYOOR VILLAGE,
THIRUVANANTHAPURAM TALUK AND DISTRICT,
PIN - 695042
- 5 PRAVEEN, AGED 42 YEARS
S/O BHASKARAN, BUSINESS,
DARFA VILAKAM VEEDU, PUTUHENKADA,
THIRUPURAM P.O., THIRUPURATHOOR DESOM
THIRUPURAM VILLAGE, NEYYATTINKARA TALUK,
THIRUVANANTHAPURAM, PIN - 695133.
- 6 VALSALA DEVI K, TC 86/56, DEEPTHI,
CHACKAI, PETTAH P.O.,
THIRUVANANTHAPURAM., PIN - 695024.

BY ADVS. BENCILAL B.S.
RINU. S. ASWAN(K/000981/2012)
GOPIKA H.H(K/1398/2020)
YADHU S ASWAN(K/2361/2024)

THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION ON
04.11.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



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JUDGMENT

Devan Ramachandran, J.

Through this Original Petition, the petitioner - the wife of the 1st respondent - challenges Ext.P5 order of the learned Family Court, Thiruvananthapuram.

2. We notice from the materials on record that the impugned order was issued by the learned Family Court vacating the attachment it had earlier ordered on the schedule property through I.A.No.2/2023, on the basis of a subsequent application filed by respondents 5 and 6 herein, namely I.A.No.3/2024, claiming that the first among them had purchased it much before the order of attachment.

3. Shorn of unnecessary details, the petitioner filed O.P.No.2643/2023 against the 1st respondent-her husband, as also her parents-in law and sister-in-law, namely respondents 2 to 4. Along



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with the Original Petition or immediately after filing it, she preferred I.A.No.2/2023 to attach the property of the mother-in-law (3rd respondent), which was allowed on 21.12.2023.

4. Thereupon, I.A.No.3/2024 was filed by respondents 5 and 6 (who will hereinafter be referred to as 'claim petitioners'), asserting that the property in question was sold to the 1st among them - namely Sri.Praveen, by the 3rd respondent (mother-in-law of the petitioner) as early as on 15.03.2023, through Sale Deed bearing No.582/2023, for a consideration of Rs.12,50,000/-. They asserted that the 1st among them (5th respondent) had the transfer of Registry of the property affected in his name and that he was remitting tax on it; and further, that he has entered into an Agreement of the same to sell it to the second among them



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(the 6th respondent). They thus prayed that the attachment earlier ordered by the learned Family Court, through the order in I.A.No.2/2023, be vacated.

5. The order impugned, namely Ext.P5, indicates that, it is the specific case of the petitioner, as is also asserted by her learned counsel - Smt.Rajitha V.K., that the first among the claim petitioners - Sri.Praveen (5th respondent), is a close friend of her husband - Sri.Prasanthkumar (1st respondent); and that he was involved in resolving the matrimonial disputes between the couple even from the year 2014 till 2015. She is also seen to have averred that Sri.Praveen promised her that he would ensure that the property is registered in her name by the 1st respondent - who was then serving on a ship as a sailor - whenever he returns; but



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that, through a collusive action, the Sale Deed bearing No.582/2023 was created on 15.03.2023, solely to defeat her claim.

6. However, the learned counsel for respondents 2 to 6 - Sri.Rinu S.Aswin, reiterated that the 5th respondent is a *bona fide* purchaser of the property; and that this was done several months before the order of attachment was issued by the learned Family Court on 21.12.2023. He argued that, when the property has been, admittedly, transferred in Registry in the name of the 5th respondent, and since he has been remitting tax thereon thereafter, an order attaching it ought not to have been issued by the learned Family Court, as it has done.

7. It is thus indubitable that, on one hand, the petitioner-wife singularly pleads and



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maintains that the 5th respondent - Sri.Praveen, is a close friend of her husband, who was not merely aware of the matrimonial disputes between them, but had even mediated to resolve the same, offering that the property will be settled in her name whenever her husband returns back from duty.

8. Even though the learned Family Court has dealt with the afore rival assertions, it has not gone into the merits of the same; but has concluded that, since the Sale Deed in favour of the 5th respondent is dated 15.03.2023 and is seen supported by a consideration of Rs.12.5 lakhs, *"at present, I do not have any materials to find that the said transaction is a fraudulent transaction."* (sic)

9. We are afraid that we cannot find favour with the afore holdings of the learned



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Family Court without more scrutiny because, we are of the firm opinion that it appears to have pre-judged the issue, without even having given any opportunity to the parties to lead evidence or to substantiate their case.

10. We say as afore because, when there are factual assertions on both sides - which remain uncorroborated and unsubstantiated as of now - the mere factum of a sale transaction having taken place on 15.03.2023 could not have been the sole reason to find against the petitioner - wife. This is particularly since, the law is well settled that even transactions which are prior to a specified period from the date of initiation of proceedings may fall within the umbra of legal evaluation by Courts; and in this case, it is pertinent that the petitioner - wife specifically says that the 5th



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respondent is a close friend of her husband, who had mediated to resolve their matrimonial issues ever since 2014, till 2015.

11. As seen above, the further claim made by the petitioner is that the 5th respondent had even promised her that the property would be got assigned in her name in lieu of gold ornaments and cash she had entrusted to the respondent; but this has also not been considered by the Trial Court at all in any manner.

12. Further, though we are not finding it to be conclusively true at this stage, it is also relevant that the petitioner - wife has an adscititious contention that, even after the sale is stated to have been effected and completed in favour of the 5th respondent, respondents 1 to 3 are living in the same house;



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and thus that this leads to a legitimate suspicion that it was a transaction intended to defeat her rights. We are sure that this also ought to have been considered by the learned Family Court, which it does not appear to have done in Ext.P5.

13. Ineluctably, we can only hold that the findings in Ext.P5 have been entered into without necessary evaluation, particularly when we see that none of the parties were offered any opportunity of leading evidence, or to establish their case through cogent materials.

In the afore circumstances, but without entering into the merits of the rival contentions any further, we allow this Original Petition and set aside Ext.P5; with a consequential direction to the learned Family Court to reconsider I.A.No.3/2024 in



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O.P.No.2643/2023, after affording necessary opportunity to both sides, as expeditiously as is possible.

We, however, clarify that our observations above are only tentative and *prima facie* in nature; and that they will not bind the learned Family Court, if materials and germane evidence are presented before it by the parties; thus being free to take any decision that it may find apposite in the circumstances, without being fettered or influenced by anything that we have said in this judgment.

Sd/-

DEVAN RAMACHANDRAN

JUDGE

Sd/-

M.B.SNEHALATHA

JUDGE

akv



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APPENDIX OF OP (FC) 541/2024

PETITIONER EXHIBITS

- EXHIBIT P1 A TRUE COPY OF OP 2643/2023 ON THE FILES OF THE FAMILY COURT, THIRUVANANTHAPURAM
- EXHIBIT P2 A TRUE COPY OF IA NO. 2/2023 IN O.P NO. 2643/2023 BEFORE THE FAMILY COURT, THIRUVANANTHAPURAM DATED 18/12/2023
- EXHIBIT P3 A TRUE COPY OF IA NO. 3/2024 IN O.P NO. 2643/2023 BEFORE THE FAMILY COURT, THIRUVANANTHAPURAM DATED 28/02/2024
- EXHIBIT P4 A TRUE COPY OF OBJECTION IN IA NO. 3/2024 IN O.P NO. 2643/2023 BEFORE THE FAMILY COURT, THIRUVANANTHAPURAM DATED 17/04/2024
- EXHIBIT P5 A TRUE COPY OF THE COMMON ORDER DATED 05.07.2024 OF THE FAMILY COURT, THIRUVANANTHAPURAM IN IA NO. 2/2023 AND I.A NO. 3/2024 IN O.P NO. 2643/2023 GRANTING TO LIFT THE ATTACHMENT MADE AS PER ORDER IN I.A NO. 2/2023

RESPONDENT EXHIBITS

- EXHIBIT R6 (A) TRUE COPY OF THE SALE DEED NO 582/23 OF NEMAM SRO DATED 15.3,2023.
- EXHIBIT R6 (B) A TRUE COPY OF THE SALE DEED NO. 1224/1992 OF THE NEMOM SRO DATED 19.05.92



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EXHIBIT R6 (C)

A TRUE COPY OF THE COMMUNICATION
ISSUED FROM NEMOM SRO DATED 05.06.24