

Shihabudeen Vs. Seenath

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Court : Kerala

Decided On : Jan-31-2013

Judge : Honourable Mr.Justice Pius C.Kuriakose

Appellant : Shihabudeen

Respondent : Seenath

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM C. R. PRESENT: THE HONOURABLE MR.JUSTICE PIUS C.KURIAKOSE & THE HON'BLE MR. JUSTICE BABU MATHEW P.JOSEPH THURSDAY, THE 31ST DAY OF JANUARY 2013 11TH MAGHA 193 OP (FC).No. 102 of 2013 (R) ----- AGAINST THE ORDER IN OP.945/2010 of FAMILY COURT, KOTTARAKKARA ----- PETITIONER: ----- SHIHABUDEEN, AGED 3 YEARS S/O.ALIYARUKUNJU, RESIDING AT KALLUVILA PUTHEN VEEDU PERAYAM, UMayANALLOOR P.O., KOLLAM. BY ADVS.SRI.JOHNSON GOMEZ SRI.S.BIJU (KIZHAKKANELA) RESPONDENT: ----- SEENATH, SEENA MANZIL, AYIRAKKUZHI, CHITHARA KADAKKAL, KOTTARAKKARA. THIS OP (FAMILY COURT) HAVING BEEN FINALLY HEARD ON 31-01-2013, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: OP (FC).No. 102 of 2013 (R) APPENDIX PETITIONER'S EXTs EXT.P1:- A TRUE COPY OF THE ORIGINAL PETITION IN OP NO.945/10 FILED BY THE RESPONDENT AGAINST THE PETITIONER BEFORE THE FC, KOTTARAKKARA. EXT.P2:- A TRUE COPY OF IA NO.3007/11 IN OP NO.945/10 FILED BY THE PETITIONER

BEFORE HE FC, KOTTARAKKARA. EXT.P3:- A TRUE COPY OF THE ORDER DATED 1 T FEBRUARY 201 IN IA. 3007/11 IN OP.945/10 PASSED BY THE FC, KOLLAM EXT.P4:- A TRUE COPY OF THE OP 536/11 BEFORE THE FC, KOLLAM EXT.P5:- A TRUE COPY OF OP IN MC 33/12 BEFORE THE FC, KOLLAM. PIUS C. KURIAKOSE & BABU MATHEW P. JOSEPH, JJ.

C. R. ----- O. P. (FC) No.102 of 2013
----- Dated this the 31st day of January, 2013
JUDGMENT Pius C. Kuriakose, J Under challenge in this Original Petition is Ext.P3 order passed by the Family Court, Kottarakkara. The above order is passed by the Family Court in I.A. No.3007 of 2011 wherein the prayer was that the issue of territorial jurisdiction of the Family Court, Kottarakkara to entertain and try the O.P. be decided as a preliminary issue. Under Ext.P3, learned Family Court has found that though it is true that the property which is the subject matter of the case is situated within the limits of the Family Court, Kollam, as one of the parties to the marriage is residing within the limits of the Kottarakkara Court and as the dispute arose out of a family dispute, the Kottarakka Court has co-ordinate jurisdiction to entertain the O.P. O. P. (FC) No.102 of 2013 -2- 2. The view of the learned Family Court in our opinion is erroneous. The proceeding in question is a proceeding in respect of immovable property situated within the territorial limits of Family Court, Kollam. The principal relief sought for is a decree of declaration of the petitioner's right, title and possession of the immovable property. Going by Section 16 of the Code of Civil Procedure the proceeding which is virtually a suit can be instituted only within the local limits of the court within whose jurisdiction the property is situated. Section-7 of the Family Courts Act provides as follows:-
7(1) - Subject to the other provisions of this Act, a Family Court shall - a) have and exercise all the jurisdiction exercisable by any District Court or any subordinate Civil Court under any law for the time being in force in respect of suits and proceedings of the nature referred to in the Explanation; and b) be deemed, for the purposes of exercising such jurisdiction under such law, to be a District Court or, as the case may be, such subordinate Civil Court for the area to which the jurisdiction of the Family Court extends. O. P. (FC) No.102 of 2013 -3- Explanation :- It is clause (c) of the explanation which is applicable and the same takes in - "a suit or proceeding between the parties to a marriage with respect to property of the

parties or either of them." Section 10 of the Family Courts Act Provides as follows:-
Sec-10:- Subject to the other provisions of this Act and the Rules, the provisions of the Code of Civil Procedure, 1908 (5 of 1908) and of any other law for the time being in force shall apply to the suits and proceedings [other than the proceedings under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974)] before a Family Court and for the purposes of the said provisions of the Code, a Family Court shall be deemed to be a Civil Court and shall have all the powers of such Court.

3. Therefore Ext.P1 OP where the principal relief sought for is a decree of declaration in respect of immovable property situated within the territorial limits of Kollam Family Court can be instituted only before the Kollam Family Court.

4. In that view of the matter we set aside Ext.P3 and allow I.A. No.3007/11. We direct the Family Court, Kottarakkara to return OP.945/10 and all other documents and interlocutory proceedings therein to the person who O. P. (FC) No.102 of 2013 -4- presented the same so that the same can be presented before the Family Court, Kollam. Sd/- PIUS C. KURIAKOSE JUDGE Sd/- BABU MATHEW P. JOSEPH JUDGE kns/- //TRUE COPY// P.A. TO JUDGE

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