

PrabijA.A.V Vs. Shiju.E

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Court : Kerala

Decided On : Jul-30-2013

Judge : Honourable Mr.Justice Antony Dominic

Appellant : PrabijA.A.V

Respondent : Shiju.E

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE ANTONY DOMINIC & THE HONOURABLE MR. JUSTICE P.D.RAJAN TUESDAY,THE 30TH DAY OF JULY 2013 8TH SRAVANA, 1935 OP (FC).No. 2603 of 2013 (R) -----

PETITIONER(S)/JUDGEMENT

DEBTOR:

----- PRABIJA.A.V AGED 2 YEARS
D/O.PRAKASAN A.V., THAROL AYYANAM VEETIL POST MALAPARAMBA
CHEVAYUR AMSOM DESOM,KOZHIKODE TALUK. PIN

009. (CHEVAYUR PSL). BY ADV. SRI.P.V.KUNHIKRISHNAN
RESPONDENT(S)/DECREE HOLDER: -----

SHIJU.E, AGED 3 YEARS S/O.GANGADHARAN, IYYAKKUNNATH HOUSE,
KARANNUR AMSOM PUTHUR DESOM, P.O.ERANHIKKAL KOZHIKODE
TALUK(ELATHUR PSL

303. THIS OP (FAMILYCOURT) HAVING COME UP FOR ADMISSION ON 30-07-2013, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: OP (FC).No. 2603 of 2013 (R) ----- APPENDIX PETITIONER(S)' EXHIBITS ----- EXT.P-1: TRUE COPY OF E.P. NO.12/2013 IN O.P.NO.221/2011 ON THE FILE OF THE FAMILY COURT, KOZHIKODE. EXT.P-2: TRUE COPY OF THE ORDER DATED 19.9.2011 IN O.P. NO.221/2011 ON THE FILE OF THE FAMILY COURT, KOZHIKODE. EXT.P-3: TRUE COPY OF THE COMPLAINT DATED 6.6.2013 FILED BY THE PETITIONER AGAINST THE RESPONDENT AND OTHERS WHICH IS NOW PENDING AS CRIME NO.225/2013 OF ELATHUR POST STATION. RESPONDENT(S)' EXHIBITS -----: NIL TRUE COPY PA TO JUDGE. acd ANTONY DOMINIC & P.D. RAJAN, JJ.

----- O.P.(FC)No.2603 of 2013
----- Dated this the 30th day of July, 2013
JUDGMENT ANTONY DOMINIC,J.

Heard the learned counsel for the petitioner.

2. O.P.No.221/2011 was filed by the respondent before the Family Court, Kozhikode for restitution of conjugal rights. By Ext.P2, the O.P. was decreed and according to the petitioner, she joined the respondent husband in compliance with the decree, on 11.9.2011.

3. It is stated that, subsequently, she had left the matrimonial home on 12.11.2012 on account of various cruelties suffered by her. It is also stated that on her complaint, Crime No.225/2013 was registered at Elathoor Police Station and that the same is pending.

4. The grievance of the petitioner is that now E.P.No.12/2013 has been filed by the respondent seeking execution of Ext.P2 decree. The petitioner contends that she having already joined the respondent in pursuance to the decree, the decree has been satisfied and therefore, E.P. is not sustainable. It is with that contention, this O.P. is filed seeking to quash proceedings in E.P.No.12/2013 on the file of the Family Court, Kozhikode. O.P.(FC)No.2603/1

5. In our view, even if what the petitioner contends is correct, the course, which should have been adopted by the petitioner, was to have filed her objection to the E.P. before the Family Court itself. If such an objection is filed by the petitioner, it is for the Family Court to consider whether there is any substance in the objection or not.

6. Admittedly, the petitioner has not objected to such a course of action. Therefore, we dispose of this O.P. leaving it open to the petitioner to object to the E.P. filed by the respondent before the Family Court itself. ANTONY DOMINIC, JUDGE P.D. RAJAN, JUDGE. acd O.P.(FC)No.2603/13 3 O.P.(FC)No.2603/13 4

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