

Vaheeda Vs. Hamsakutty

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Court : Kerala

Decided On : Nov-11-2013

Judge : Honourable Mr.Justice Antony Dominic

Appellant : Vaheeda

Respondent : Hamsakutty

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE ANTONY DOMINIC & THE HONOURABLE MR. JUSTICE P.D.RAJAN MONDAY,THE11H DAY OF NOVEMBER201320TH KARTHIKA, 1935 OP (FC).No. 2396 of 2013 (R) ----- (TA.NO. 679/2013 IN OP NO. 270/2013 IN FAMILY COURT, IRINJALAKUDA) ----- PETITIONER : ----- VAHEEDA, AGED44YEARS, W/O.HAMSAKUTTY, D/O.KOYAKURUKKAL, (THIRUTHUR) PUDUSSERY THAZHATH HOUSE, KODAKARA VILLAGE DESOM MUKUNDAPURAM, THRISSUR DISTRICT. BY ADVS.SRI.P.RADHAKRISHNAN SRI.MADHU RADHAKRISHNAN SRI.NELSON JOSEPH SRI.M.D.JOSEPH RESPONDENT(S) : ----- 1. HAMSAKUTTY, AGED52YEARS, S/O.(THIRUTHUR) KARADAN MOIDEEN KODAKARA VILLAGE DESOM, MUKUNDAPURAM THRISSUR DISTRICT, PIN-680 684.

2. KOYAKURUKKAL, AGED68YEARS, S/O. (THIRUTHUR) PUDUSSERY THAZHATH HOUSE KODAKARA VILLAGE DESOM, MUKUNDAPURAM

THRISSUR DISTRICT, PIN-680 684. R1 BY ADV. SRI.K.S.BHARATHAN THIS OP (FAMILYCOURT) HAVING BEEN FINALLY HEARD ON 11-11-2013, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: Mn ...2/- OP (FC).No. 2396 of 2013 (R) ----- APPENDIX PETITIONER(S)' EXHIBITS : ----- EXHIBIT P1 : TRUE COPY OF THE PLAINT OP. 270/2013. EXHIBIT P2 : TRUE COPY OF THE IA6792013 IN OP2702013. EXHIBIT P3 : TRUE COPY OF THE COUNTER AFFIDAVIT FILED BY THE PETITIONER IN IA6792013 IN OP2702013. EXHIBIT P4(a) : TRUE COPY OF THE NOTICE ISSUED TO PETITIONER AND HER FAMILY MEMBERS. EXHIBIT P4(b) : TRUE COPY OF THE NOTICE ISSUED TO PETITIONER AND HER FAMILY MEMBERS. EXHIBIT P4(c) : TRUE COPY OF THE NOTICE ISSUED TO PETITIONER AND HER FAMILY MEMBERS. EXHIBIT P5 : TRUE COPY OF THE INJUNCTION

ORDER

DATED 15-11-2013 PASSED BY THE COURT BELOW IN IA.NO. 679/2013 IN OP2702013. EXHIBIT P6 : TRUE COPY OF THE COMMISSION REPORT IN IA6792013 IN OP2702013. RESPONDENT(S)' EXHIBITS : NIL ----- //TRUE COPY// P.S. TO JUDGE Mn ANTONY DOMINIC & P.D.RAJAN, JJ O.P(FC) No.2396 of 2013 Dated 11th November, 2013

JUDGMENT

ANTONY DOMINIC, J The parties to this O.P are the parties in O.P.No.270 of 2013 on the file of Family Court, Irinjalakkuda.

2. The petitioner and first respondent are wife and husband. Second respondent is her father. The marriage between the parties was solemnized as early as on 29.10.1989 and in the wedlock, they are blessed with three male children. Difference of opinion cropped up in the marital life which led to the filing of O.P.No.270 of 2013, before Family Court, Irinjalakkuda whereunder the first respondent husband sought declaration of title over item Nos.1 and 4 in the schedule to the petitioner and a further declaration that he is entitled to get possession of item Nos. 2 and 3. Consequent relief of injunction was also sought

for. Ext.P1 is the copy of the O.P.

3. Along with the O.P, he also filed I.A.No.679 of 2013, a copy of which is Ext.P2. In that I.A, he sought an interim injunction restraining the petitioner, second respondent and their men from interfering with the possession of the petition schedule properties and also from executing any documents in o.p(fc)2396/2013 2 relation thereto.

4. The affidavit filed in support of the I.A would show that according to the first respondent, the properties in question were acquired by him out of his earnings. Ext.P3 is the objection filed by the petitioner and the second respondent. She has made various allegations against the first respondent and also explained the circumstances, which according to her, led to the marital disharmony. She stated that item No.1 was acquired by her own funds but being the husband, first respondent's name also was shown in the document of title. In so far as item No.2 is concerned, she contended that the property exclusively belonged to her as it was acquired by utilizing her resources. In so far as item No.3 is concerned, according to her, a portion of the sale consideration was contributed by the first respondent and remaining was contributed by herself. The petitioner produced Exts.B1 to B16 to substantiate her contentions and the first respondent produced Exts.A1 to A10.

5. Family Court heard the parties and finally passed Ext.P5 order granting injunction as prayed for subject to the direction that first respondent shall also not commit any waste o.p(fc)2396/2013 3 in the property and shall account the monthly income of the property to the court every month. It is this order which is under challenge by the petitioner.

6. We heard learned counsel for the petitioner and learned counsel appearing for the first respondent and considered the submissions made. In our view, the order calls for interference. The pleadings of both sides would show that while the first respondent petitioner who admittedly is employed in the middle east, contended that the property in question was acquired by him utilizing his hard-earned money, the case of the petitioner, first respondent, before the Family Court was that the property was acquired utilizing her money and also with the assistance extended

by her family members. The yield from the properties in question were also taken by the petitioner wife and that she and her children are residing in the building in item No.1 is also seen from the pleadings. It was in such a case that an order of injunction has been passed against the petitioner whereby she is restrained from disturbing possession of first respondent and from executing any document in relation to the property. Though we do not find anything objectionable in maintaining the restraint order o.p(fc)2396/2013 4 preventing the petitioner from executing any document in relation to the property, in our view, the effect of the remaining part of the order is that petitioner's existing possession could be disturbed. Such a situation could not have been created at an interlocutory stage and it is for that reason we feel that the order calls for interference.

7. Therefore, we set aside Ext.P5 order. But however direct that the petitioner wife shall submit accounts in respect of the income derived from item Nos. 1 to 3 before Family Court. The said accounts shall be submitted before the 5th of every month. She shall also deposit 50% of the income derived from item Nos.1 and 3. Such deposit shall be made before a scheduled bank in an interest earning deposit on a monthly basis and the deposit receipt shall be produced before the Family Court with lien noted in favour of the court. The disbursement of the amount will depend upon the final order to be passed by the Family Court. The order restraining the petitioner and second respondent from alienating or otherwise dealing with item No.1 to 3 properties is maintained. We clarify that if the case is ripe for trial, it will be open to the first respondent to seek expeditious disposal of the O.P. o.p(fc)2396/2013 5 Original Petition is disposed of as above. ANTONY DOMINIC, JUDGE P.D.RAJAN, JUDGE Igk

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