

Albert Vs. Beena

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Court : Kerala

Decided On : Feb-04-2014

Judge : Honourable Mr.Justice C.T.Ravikumar

Appellant : Albert

Respondent : Beena

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE HARUN-UL-RASHID & THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS TUESDAY, THE 4TH DAY OF FEBRUARY 2014 15TH MAGHA, 1935 OP (FC).No. 3805 of 2013 (R) ----- PETITIONER/RESPONDENT: ----- ALBERT S/O.KURISHUMIKLE, RESING AT SAMJIL, IDINJAR IDINJAR P.O, THENNOOR VILLAGE, NEDUMANGAD TALUK BY ADV. SRI.P.V.KUNHIKRISHNAN RESPONDENT/PETITIONER: ----- BEENA, AGED 34 YEARS D/O.PHILOMINA, RSIDING AT SAMJIL, IDINJAR IDINJAR P.O, THENNOOR VILLAGE NEDUMANGAD TALUK 695563 BY ADV. SRI.V.SURESH BY ADV. SRI.G.SUDHEER THIS OP (FAMILY COURT) HAVING BEEN FINALLY HEARD ON 04-02-2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: OP (FC).No. 3805 of 2013 (R) ----- APPENDIX PETITIONER'S EXHIBITS ----- EXHIBIT P1 : TRUE COPY OF THE PLAINT IN O.P.NO.514/2013 ON THE FILE OF THE FAMILY COURT, NEDUMANGAD EXHIBIT P2 : TRUE COPY OF THE PETITION FILED BY THE

RESPONDENT FOR ATTACHMENT DATED 26.06.2013 WHICH IS NUMBERED AS I.A.NO.1656/2013 EXHIBIT P3 : TRUE COPY OF THE COUNTER DATED 01.08.2013 FILED BY THE PETITIONER TO EXHIBIT P2 PETITION EXHIBIT P4 : TRUE COPY OF THE DOCUMENT DATED 02.01.2006 PRODUCED BY THE PETITIONER EXHIBIT P5 : TRUE COPY OF THE TAX RECEIPT DATED 14.03.2007 EXHIBIT P6 : TRUE COPY OF THE STATEMENT FILED BY THE PETITIONER DATED 03.08.2013 EXHIBIT P7 : A COPY OF THE COUNTER DATED NIL FILED BY THE RESPONDENT TO EXHIBIT P6 STATEMENT EXHIBIT P8 : TRUE COPY OF THE

ORDER

DATED 20.09.2013 IN I.A NO.1656/2013 IN O.P.NO.514/2013 ON THE FILE OF THE FAMILY COURT, NEDUMANGAD RESPONDENT'S EXHIBITS ----- NIL. TRUE COPY P.S. TO JUDGE HARUN-UL-RASHID & ALEXANDER THOMAS, JJ.

----- O.P.(FC) NO.3805 OF 2013----- DATED THIS THE 4TH DAY OF FEBRUARY, 2014

JUDGMENT

Harun-UI-Rashid, J.

Petitioner is the respondent in O.P.No.514/2013 and I.A.No.1656/2013 on the file of the Family Court, Nedumangad. The wife of the petitioner filed the original petition for recovery of money and value of the ornaments. Along with the original petition Ext.P2 application for attachment before judgment of the petition schedule property was also filed. Petitioner herein filed counter and offered an amount of `5,00,000/- as cash and property covered by Ext.P4 document, which according to him, worth `30,00,000/-. The property covered by Ext.P4 document is 50 cents of land. The Family Court disallowed the request of the petitioner in the matter of offer of property covered by Ext.P4 document. The Family Court passed Ext.P8 order holding that the petition schedule property will -2- O.P.(FC).No.3805/2013 stand attached till the disposal of the main O.P.

2. Ext.P4 property offered as security for the claim of the respondent was not accepted without stating any reasons. Petitioner was not given an opportunity to substantiate his case that Ext.P4 property is sufficient security for the claim of the respondent. The Family Court without conducting any enquiry and without giving an opportunity to the petitioner attached the petition schedule property. Petitioner has deposited a sum of `5,00,000/-. He also offered `5,00,000/- and for the balance claim offered the property covered by Ext.P4 document.

3. On a reading of Ext.P8 order it is clear that the offer of the petitioner was not considered nor he was given an opportunity to substantiate his contention that Ext.P4 property is sufficient security for the claim of the respondent. In the circumstances, the impugned order is liable to be set aside. In addition to the amount of `5,00,000/- deposited the petitioner is willing to deposit another `5,00,000/- and requested that Ext.P4 property may be accepted as sufficient security for the claim. The -3- O.P.(FC).No.3805/2013 contention that Ext.P4 property is sufficient security is matter to be decided by the Family Court on merits at the time of passing Ext.P8 order. No attempt was made by the Family Court to enquire about the request of the petitioner. In the result, Original Petition is allowed. Ext.P8 order is set aside. There will be a direction to the Family Court to consider I.A.No.1656/2013 afresh and dispose of the same as expeditiously as possible, at any rate within a period of two months from the date of receipt of a copy of this judgment subject to the condition that the petitioner shall deposit `10,00,000/- (Rupees ten lakhs) before the court below within a period of three weeks from today. HARUN-UL-RASHID, Judge. ALEXANDER THOMAS, Judge. kcv.

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