

Jaison Vs. Rasna

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Court : Kerala

Decided On : May-26-2014

Judge : Honourable Mr.Justice V.K.Mohanan

Appellant : Jaison

Respondent : Rasna

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE V.K.MOHANAN & THE HONOURABLE MR. JUSTICE A.HARIPRASAD MONDAY, THE 26TH DAY OF MAY 2014 5TH JYAISHTA, 1936 OP (FC).No. 4471 of 2013 (R) ----- [AGAINST THE

ORDER

IN CA82313 IN OP7642012 of FAMILY COURT, IRINJALAKUDA DATED 5.12.2013] PETITIONER(S): ----- JAISON S/O.THEKKEKARA KORATH SANY, PULLUR VILLAGE AND DESOM MUKUNDAPURAM TALUK, THRISSUR DISTRICT. BY ADV. SRI.T.N.MANOJ RESPONDENTS(S): -----
1. RASNA D/O.KOKKADAN JOSEPH, PUDUKKAD DESOM, THORAVU VILLAGE THRISSUR DISTRICT - 680 683.

2. MINOR AMMU JAISON REPRESENTED BY HER MOTHER AND GUARDIAN 1T RESPONDENT.

3. MINOR APPU JAISON REPRESENTED BY HER MOTHER AND GUARDIAN1T RESPONDENT. R1-R3 BY ADV. SRI.S.U.NAZAR R1-R3 BY ADV. SRI.MANSOOR.B.H. THIS OP (FAMILY COURT) HAVING BEEN FINALLY HEARD ON2605-2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: OP (FC).No. 4471 of 2013 (R) ----- APPENDIX PETITIONER(S)' EXHIBITS ----- EXT.P-1: TRUE COPY OF THE OP7642012 ON THE FILES OF FAMILY COURT, IRINJALAKUDA DATED283.2012 EXT.P-2: TRUE COPY OF THE OP2942013 ON THE FILES OF FAMILY COURT, IRINJALAKUDA EXT.P-3: TRUE COPY OF THE MC922013 ON THE FILES OF FAMILY COURT, IRINJALAKUDA. EXT.P-4: TRUE COPY OF PETITION IA7012013 IN OP7642012 ON THE FILES OF FAMILY COURT, IRINJALAKUDA EXT.P-5: TRUE COPY OF PETITION IA18742013 IN OP7642012 ON THE FILES OF FAMILY COURT, IRINJALAKUDA EXT.P-6: TRUE COPY OF COPY APPLICATION DATED2211.2013 EXT.P7: TRUE COPY OF THE

ORDER

DATED512/2013 OF THE FAMILY COURT AT IRINJALAKUDA. V.K.MOHANAN & A.HARIPRASAD, JJ.

----- O.P(FC) No. 4471 of 2013
----- Dated this the 26th day of May, 2014

JUDGMENT

Hariprasad,J: This Original Petition (FC) is filed under Article 227 of the Constitution of India with following prayers:- "(A) Appropriate order or direction to the Family court at Irinjalakuda to hear and to dispose of IA7012013 and IA18742013 (Exhibit P4 and Exhibit P5) in OP7642012 filed by the petitioner before proceeding to decide MC922013 or OP7642013 or OP1942013, pending on its files. (B) Appropriate order/direction to the Family Court, Irinjalakuda to issue certified copy of the Psychological report dated 26/9/2013 to the petitioner. (C) Such other order or direction that his Honourable Court deems fit to grant it he course of the proceedings. (D) Issue appropriate order to quash Ext.P7" Prayer (A) in this O.P(FC) has admittedly become infructuous. Therefore, we shall only

consider prayer (B).

2. The petitioner is the respondent in O.P.No.764 of 2012 filed by the first respondent herein seeking a decree of divorce under O.P(FC) No. 4471 of 2013 :- 2:- Section 10(1)(x) of the Indian Divorce Act. It is seen from the records that the parties have been sent for Psychological Counselling and reports have been obtained. The grievance of the petitioner is that as per Ext.P7 order, the Family Court rejected his prayer to get a certified copy of the Counselling Report, submitted by the Psychological Counsellor, pertaining to the petitioner.

3. Heard the learned counsel for the petitioner and the learned counsel for the respondents.

4. The learned Judge of the Family Court, by a cryptic order, dismissed Ext.P6 copy application stating that the petitioner is not entitled to get a copy of the Psychological Counsellor's report and therefore, the prayer was rejected. Learned counsel for the petitioner took us to various provisions of the Family Courts (Kerala) Rules,1989. Rules 24 to 38 deal with the counselling procedure. Our attention had been drawn specifically to Rules 29,30,31,32 and 33. Rule 29 of the said Rules states that any information gathered by the O.P(FC) No. 4471 of 2013 :-3:- Counsellor, any statement made before the Counsellor or any notes or report prepared by the Counsellor shall be treated as Confidential. The Counsellor shall not be called upon to disclose this information, statements, notes or report to any Court except with the consent of both the parties. Rule 30 says that the Counsellor shall not be permitted to give evidence in any court in respect of the information, statements, notes or report referred to in Rule 29. Rule 31 would show that the Court may also request the Counsellor to submit to it a report on any other subject in order to assist the Court in adjudicating upon the matter before it. Rule 32 specifically confers right on the parties to make their submissions based on the report.

5. Learned counsel for the petitioner submitted that these provisions would go to show that the petitioner is entitled to get a copy of the report submitted by the Psychological Counsellor because then only he can make submissions on the basis of that report. The learned Single Judge of this Court in Karunakaran v.

Vasanthi O.P(FC) No. 4471 of 2013 :-4-: [2009(1) KLT768 had occasion to consider this question. We may extract the relevant paragraph of the above decision which reads as follows:- "36. It is contended that inasmuch as R.32 which I extract below permits the parties to make their submissions on the report, it can be assumed that after hearing such submissions such reports can be received in evidence. "32. Parties, right to make submissions.-- The parties shall be entitled to make their submission on the report." I am unable to accept this contention as that would oblige the parties to be bound by a report, the maker of which cannot be examined in court in chief or cross. I reckon the enabling provision to receive reports (Reports 1 to 4 above) under Rr.30,31 and 53 as only methods to apprise the court of such broad circumstances in the background of which the evidence/materials in the case is to be appreciated by the Family Court at the stage of formal dispute resolution. The copies of the reports must certainly be furnished to all parties to the lis. Even though only R.31 speaks of such a specific requirement it can easily be assumed that the copies of reports under Rr.30,31 and 53 must all be certainly furnished to the parties as in the absence of such reports they cannot be expected to make their submissions on such reports. R.32 would become meaningless if it were to be assumed that the party who has not been given a copy of the report will be obliged to make his submission on the report." O.P(FC) No. 4471 of 2013 :-5-: We are in agreement with the view taken by the learned Single Judge.

6. Learned counsel for the respondents objected to the submission made by the petitioner stating that the confidentiality of the report will be lost, if a copy is given to the petitioner. We are unable to accept this contention for the reasons stated in the above judgment. The petitioner is only seeking a report pertaining to his mental state. He is not seeking a copy of the report pertaining to the first respondent. We do not find any reason to decline the prayer made in Ext.P6 copy application. We also find that the court should have granted the prayer of the petitioner and issued a copy for the aforementioned reasons. In the result, the Family Court, Irinjalakuda is directed to issue a certified copy of the Psychological Report in respect of the petitioner as per Ext.P6 copy application within two weeks from today. O.P(FC) No. 4471 of 2013 :-6-: This Original Petition (FC) is allowed as above. V.K.MOHANAN, Judge A.HARIPRASAD, MBS/ Judge. O.P(FC) No.

4471 of 2013 :-7-:

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