

K.a.Ruby vs K.a.Muhammed

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Court : Kerala

Decided On : Feb-29-2024

Judge : Honourable Mrs. Justice Anu Sivaraman, Honourable Mr. Justice C.Pratheep Kumar

Appeal No. : Mat.Appeal/410/2022

Appellant : K.a.Ruby

Respondent : K.a.Muhammed

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN & THE HONOURABLE MR. JUSTICE C.PRATHEEP KUMAR
THURSDAY, THE 29TH DAY OF FEBRUARY 2024/10TH PHALGUNA, 1945 MAT.APPEAL NO. 410 OF 2022 AGAINST THE ORDER DATED 16.02.2022 I.A. Nos.3/22021 & APPELLANT/PETITIONER: K.A.RUBY, AGED 38/2021 YEARS, D/O. K.M.ABDUL KHADAR, WOODLANDS, 13/462, SARAYU NAGAR, CHANDRANAGAR POST, PIN - 678007 BY ADVS. ATUL SOHAN SREEJA SOHAN K. R.REJI (ATTINGAL) VINAI JOHN K.V.SOHAN RESPONDENT/RESPONDENT: K.A.MUHAMMED, AGED 48/2021 YEARS, S/O.K.M.ABDUL, KHADER MANZIL, BAKEL

KUNNAL, PALLIKKARA POST, BAKKEL, KASARAGOD DISTRICT 671318 NOW AT RUBY MEHAR APPARELS, PALAKKAD 678007. BY ADVS. T.I.ABDUL SALAM K.R.MONISHA THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD ON 13.2.2024, THE COURT ON 29.02.2024 DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 29th day of February, 2024

C. Pratheep Kumar, J.

This appeal is filed by the petitioner/wife in I.A.No.3 of 2021 in O.P. No.1331 of 2021 on the file of Family Court, Palakkad, against the

order dated 16.2.2022.

2. She filed I.A. No.3 of 2021 praying for an interim prohibitory

injunction against respondent, who is her husband. As against A schedule property, she is claiming an interim injunction restraining the respondent and his men from alienating or encumbering the A schedule residential house property, trespassing into the A schedule property, committing waste therein and also from interfering with the peaceful residence of the petitioner in the building therein. As against B schedule property, she is claiming an interim injunction restraining the respondent from obstructing her from conducting business in the ground floor of the building therein.

3. According to the petitioner, petition A schedule property belongs

to her and it was purchased using her own money. B schedule property was purchased by using her own money in the name of the respondent. She constructed a commercial building in the B schedule property and started business in the said building in the name and style 'Genesis Trendsetters'. During the year 2017, in connection with the 3rd delivery, she could not go to her business place for 17 months. During the said period, the respondent had taken possession of the

B schedule building and thereafter, she was not permitted to continue business in the B schedule building.

4. Further, according to the petitioner, at the instance of the

respondent, she had executed a Gift Deed in respect of A schedule property in favour of the respondent. The respondent undertook that even though such a Gift Deed is executed in his favour, she will continue to be the title holder of the property and that execution of such a document in his favour was necessary as advised by an astrologer. She filed the injunction application alleging that the respondent was interfering with her residence in the A schedule property as well as the business in the B Schedule property.

5. The respondent filed I.A.No.6 of 2021 praying for vacating the

interim injunction already granted in favour of the petitioner. He stoutly denied all the claims of the petitioner and according to him, A schedule and B schedule properties exclusively belong to him. According to the respondent, in the year 2014, the marital relationship between himself and the petitioner got strained and accordingly they have decided to dissolve the marriage between them. As part of the understanding, the petitioner executed a Gift Deed in respect of A schedule property in his name. Further, according to him, as per the understanding, an agreement was entered into between the parties and the petitioner also executed an irrevocable Power of Attorney in his favour permitting him to conduct the business in the B schedule building. According to him, the petitioner

obtained the interim injunction suppressing the facts. Therefore, he prayed for vacating the interim injunction.

6. Admittedly, at present, the petitioner is residing in the A

schedule property. It is also admitted that at present, the respondent is doing business in the B schedule property. Admittedly, after 2017, the petitioner could not do business in the building in the B schedule property. Now, the respondent is the title holder of A and B schedule properties. The contention of the petitioner that though the title Deeds are standing in the name of the respondent, she is the

owner of the A and B schedule properties can be ascertained only after taking evidence in the O.P. In the light of the evidence available at present, the finding of the learned Family Court Judge that the petitioner is entitled to get an interim injunction to protect her residence in the A schedule property and that the respondent is entitled to get an injunction against the petitioner for conducting his business in the B schedule property could not be found fault with.

7. In view of the evidence available at present, we do not find any irregularity or illegality in the impugned order passed by the learned Family Court Judge. Therefore, this appeal is liable to be dismissed.

In the result, this appeal is dismissed. Sd/- ANU SIVARAMAN, JUDGE Sd/- C. PRATHEEP KUMAR, JUDGE sou. APPENDIX OF MAT.APPEAL 410/2022 PETITIONER ANNEXURES ANNEXURE1 TRUE COPY OF O.P. 1331/2021 ON THE FILE OF THE FAMILY COURT, PALAKKAD ANNEXURE2 TRUE COPY OF I.A 3/2021 IN O.P. 1331/2021 ON THE FILE OF THE FAMILY COURT, PALAKKAD ANNEXURE3 TRUE COPY OF THE COUNTER TO I.A 3/2021 IN O.P. 1331/2021 ON THE FILE OF THE FAMILY COURT, PALAKKAD ANNEXURE4 TRUE COPY OF I.A 6/2021 IN O.P. 1331/2021 ON THE FILE OF THE FAMILY COURT, PALAKKAD ANNEXURE A1 CERTIFIED COPY OF THE I A NO.2/2022 IN O P NO.1373/2022 OF THE FAMILY COURT, PALAKKAD. ANNEXURE A2 THE TRUE PHOTOCOPY OF THE COMMISSIONER'S

REPORT DATED 26.11.2022 WITH THE APPLICATION DATED 17.11.2022 FOR ISSUE OF COMMISSION IN I A NO.3/2022 THE ORDER DATED 18.11.2022 OF THE FAMILY COURT PALAKKAD, NOTICE OF VISIT BY THE COMMISSIONER DATED 19.11.2022 ANNEXURE A3 PHOTOGRAPHS OF THE BUILDING AND PREMISES IN PETITION `A' SCHEDULE IN O.P 1331/2021 OF THE FAMILY COURT, PALAKKAD

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