

Jo Augustine vs Ambili Jo

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Court : Kerala

Decided On : Feb-23-2024

Judge : Honourable Mr. Justice Gopinath P.

Appeal No. : OP(Crl.)/876/2023

Appellant : Jo Augustine

Respondent : Ambili Jo

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE GOPINATH P. FRIDAY,
THE 23RD DAY OF FEBRUARY 2024 / 4TH PHALGUNA, 1945
OP(CRL.) NO. 876 OF 2023 CRIME NO.968/2023 OF KALLADICODE
POLICE STATION, Palakkad AGAINST THE ORDER/JUDGMENT MC
99/2023 OF JUDICIAL MAGISTRATE OF FIRST CLASS , MANNARKAD
PETITIONER/S: JO AUGUSTINE AGED 53 YEARS SON OF V.V.
AUGUSTIN, VALAVANATHURUTHEL VEEDU, THACHAMPARA POST,
MANNARKKKAD TALUK, THACHAMPARA VILLAGE, PALAKKAD
DISTRICT, KERALA STATE., PIN - 678593 BY ADVS. SHIBIN K.F.
SEBY JOSEPH RESPONDENT/S: AMBILI JO AGED 43 YEARS
DAUGHTER OF A.J. THOMAS, AKKAMATTATHIL HOUSE,
PALAKKAYAM POST, MANNARKKAD TALUK, PALAKKAD DISTRICT,

BY ADVS. SHOBY K.FRANCIS AGI SHOBY(A-768) THIS OP (CRIMINAL) HAVING COME UP FOR ADMISSION ON 23.02.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: O.P (Crl) No.876/2023 -2-

JUDGMENT

This original petition has been filed challenging Ext.P3 order of the Judicial Magistrate of First Class, Mannarcaud in CMP No.2896/2023 in MC No.99/2023 in an application filed by the respondent under Section 23 of the Protection of Women from Domestic Violence Act, 2005. The petitioner who is the respondent in CMP No.2896/2023 in MC No.99/2023 was only aggrieved by the fact that the learned Magistrate has directed that the petitioner shall give vacant possession of the petition schedule property to the respondent herein [petitioner in CMP No.2896/2023 in MC No.99/2023]. It is submitted that while the provisions of the Protection of Women from Domestic Violence Act permits the respondent to reside in the shared household, the same cannot be to the exclusion of the petitioner. This legal position is not seriously disputed by the learned counsel appearing for the respondent.

2. Accordingly this original petition will stand disposed of setting

aside Ext.P3 order to the extent it directs the petitioner herein to handover vacant possession of the petition schedule property to the respondent (petitioner in CMP No.2896/2023 in MC No.99/2023). It is made clear that all other conditions in the order will continue to operate and the residence of the respondent in the petition schedule building shall not be interfered with O.P (Crl) No.876/2023 -3- by the petitioner. It is also made clear that the petitioner also has the right to continue in the shared household without in any manner interfering with the residence of the respondent.

3. Notwithstanding the above judgment either of the parties will be

at liberty to approach the learned Magistrate for modification of the order, if necessary. The learned Magistrate shall endeavour to dispose of MC No.99/2023

as expeditiously as possible without undue delay. Any observation in this judgment shall not affect the final adjudication of MC No.99/2023. This original petition is ordered accordingly. Sd/- GOPINATH P. JUDGE AMG O.P (Crl) No.876/2023 -4- APPENDIX OF OP(CRL.) 876/2023 PETITIONER EXHIBITS Exhibit-P1 A TRUE COPY OF THE MC NO. 99/2023, DATED 16-10-

2023, TOGETHER WITH DOMESTIC INCIDENT REPORT SUBMITTED BY THE RESPONDENT HEREIN BEFORE THE JUDICIAL MAGISTRATE OF FIRST CLASS, MANNARKKAD Exhibit-P2 A TRUE COPY OF THE CMP NO. 2896/2023, DATED 16-10- 2023, IN MC NO. 99/2023 ON THE FILES OF THE JUDICIAL MAGISTRATE OF FIRST CLASS, MANNARKKAD Exhibit-P3 THE CERTIFIED COPY OF THE ORDER DATED 16-10-2023 IN CMP NO. 2896/2023 IN MC NO. 99/2023 ON THE FILES OF THE JUDICIAL MAGISTRATE OF FIRST CLASS, MANNARKKAD

Exhibit-P4 A TRUE COPY OF FACEBOOK MESSENGER TEXT BETWEEN MR. BIJU AND THE RESPONDENT HEREIN, DATED NIL. Exhibit-P5 A TRUE COPY OF THE STATEMENT, DATED 29-05-2023, GIVEN BY THE PETITIONER HEREIN BEFORE THE STATION HOUSE OFFICER, KALLADIKODE POLICE STATION Exhibit-P6 A TRUE COPY OF THE COMPLAINT, DATED 30-05-2023, LODGED BY THE PETITIONER HEREIN BEFORE THE STATION HOUSE OFFICER, KALLADIKODE Exhibit-P7 A TRUE COPY OF THE RECEIPT, DATED 30-05-2023, ISSUED FROM THE KALLADIKODE POLICE STATION TO THE PETITIONER HEREIN Exhibit-P8 A TRUE COPY OF THE RECEIPT, DATED 06-06-2023, COUNTER SIGNED BY THE PARTIES. Exhibit-P9 A TRUE COPY OF THE RECEIPT MEMO DATED 18-07-2023 COUNTER SIGNED BY THE PARTIES. Exhibit-P10 A TRUE COPY OF THE ORIGINAL PETITION NO. 550/2023, DATED 21-07-2023, ON THE FILES OF THE OTTAPPALAM FAMILY COURT O.P (Crl) No.876/2023 -5- Exhibit-P11 A TRUE COPY OF THE PRINT OUT FROM THE OFFICIAL WEBSITE OF DISTRICT COURT PALAKKAD, DATED 05-11- Exhibit-P12 A TRUE COPY OF THE SALE DEED NO. 5519/2003, DATED 16-10-2003, ON THE RECORDS OF THE MANNARKKAD SUB REGISTRY OFFICE Exhibit-P13 A TRUE COPY OF THE ARREAR DEMAND NOTICE, DATED 31- 01-2018, ISSUED BY THE THACHAMBARA GRAMA

PANCHAYATH TO THE RESPONDENT HEREIN Exhibit-P14 A TRUE COPY OF THE OWNERSHIP CERTIFICATE, DATED 26-08-2019, ISSUED BY THE THACHAMBARA GRAMA PANCHAYATH TO THE RESPONDENT HEREIN. Exhibit-P15 A TRUE COPY OF THE POSSESSION CERTIFICATE, DATED 08-07-2020, ISSUED BY THE PALAKKAYAM VILLAGE OFFICER TO THE RESPONDENT HEREIN. Exhibit-P16 A TRUE COPY OF THE POSSESSION CERTIFICATE, DATED 20-10-2018, ISSUED BY THE PALAKKAYAM VILLAGE OFFICER TO THE RESPONDENT HEREIN. Exhibit-P17 A TRUE COPY OF THE FIR NO. 968/2023, DATED 22-10- 2023, ON THE FILES OF THE KALLADIKKODE POLICE STATION. Exhibit-P18 A TRUE COPY OF POLICE COMPLAINT DATED 22-12-2023 Exhibit-P19 A TRUE COPY OF RECEIPT FROM THE KALLADIKKODE POLICE STATION DATED 22-12-2023

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