

Sulaiman vs Sharina

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Court : Kerala

Decided On : Mar-31-2023

Judge : Honourable Mr. Justice Anil K.Narendran,Honourable Mr.Justice P.G. Ajithkumar

Appeal No. : OP (FC)/69/2023

Appellant : Sulaiman

Respondent : Sharina

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN & THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR FRIDAY, THE 31ST DAY OF MARCH 2023 / 10TH CHAITHRA, 1945 OP (FC) NO. 69 OF 2023 AGAINST THE ORDER DATED 17.09.2022 IN E.A.NO.66 OF 2015

IN E.P.NO.11 OF 2014 IN O.P.NO.588 OF 2010 OF THE FAMILY COURT, PALAKKAD PETITIONER/PETITIONER/RESPONDENT: SULAIMAN, AGED 71 YEARS, S/O KATTUBAVA RAWTHAR, PERUVAYAL VEEDU, AAYAKADU, VADAKKENCHERY, ALATHUR TALUK, PALAKKAD, PIN - 678683 BY ADVS.SAIJO HASSAN

NAGARAJ NARAYANAN RAFAEK. V.K. AATHIRA SUNNY NEEMA NEERACKAL BINCY JOB AMBADI DINESH L.K. BENOJ C AUGUSTIN K.S. SANDEEP RESPONDENTS/RESPONDENTS/PETITIONERS: 1 SHARINA, AGED 33 YEARS, D/O SULAIMAN, PALATHARA VEEDU, THOLANNUR POST, ALATHUR TALUK, PALAKKAD, PIN - 678722 2 JASMINE, AGED 32 YEARS, D/O SULAIMAN, PALATHARA VEEDU, THOLANNUR POST, ALATHUR TALUK, PALAKKAD, PIN - 678722 BY ADVS.P.B.SUBRAMANYAN P B P.B.KRISHNAN(K/1193/1994) SABU GEORGE(K/000711/1998) MANU VYASAN PETER(K/000652/2013) THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION ON 31.03.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: -2-

JUDGMENT

Anil K. Narendran, J.

The petitioner, who is the judgment debtor in E.P.No.11 of 2014 in O.P.No.588 of 2010 on the file of the Family Court, Palakkad, has filed this original petition invoking the supervisory jurisdiction of this Court under Article 227 of the Constitution of India, challenging the order dated 17.09.2022 in E.A.No.66 of 2015 in E.P.No.11 of 2014 in O.P.No.588 of 2010 of the Family Court, Palakkad.

2. On 06.02.2023, when this original petition came up

for admission, this Court issued notice on admission to the respondents by speed post, returnable within four weeks. This Court passed an interim order on 06.02.2023, which reads thus; In case actual delivery is yet to be effected, there will be an interim stay as prayed for, for a period of one month.

3. Today, when this matter is taken up for consideration, the respondents/deGREE holders enter appearance through counsel.

4. Heard the learned counsel for the petitioner and also the learned counsel for the respondents. -3-

5. The learned counsel for the respondents would raise

the question of maintainability of this original petition by contending that, in view of the provisions under Order XLIII Rule (1)(j) of the Code of Civil Procedure, 1908, the impugned

order is appealable before this Court under Section 19(1) of

the Family Courts Act, 1984. The learned counsel would also place reliance on the decision of this Court in *Jineev v. Sherly Mathew* [2011 (2) KLT 738].

6. The learned counsel for the petitioner would submit

that in view of the question of maintainability of the original petition raised by the learned counsel for the respondents, the petitioner shall file an appeal before this Court under Section 19(1) of the Family Courts Act challenging the order dated 17.09.2022 of the Family Court, which is impugned in this original petition. The learned counsel would submit that the execution petition now stands posted before the Family Court tomorrow (01.04.2023) for delivery. Having considered the submissions made by the learned counsel on both sides, while dismissing this original petition as not maintainable, without prejudice to the right of the petitioner to challenge the order dated 17.09.2022 in -4- E.A.No.66 of 2015 in E.P.No.11 of 2014 in O.P.No.588 of 2010 of the Family Court, Palakkad, in an appeal under Section 19(1) of the Family Courts Act, we deem it appropriate to direct the Family Court to defer actual delivery of the property, for a period of two weeks. Sd/- ANIL K. NARENDRAN, JUDGE Sd/- P.G. AJITHKUMAR, JUDGE AV/31/3 -5- APPENDIX OF OP (FC) 69/2023 PETITIONER EXHIBITS Exhibit P1 TRUE COPY OF THE JUDGMENT DATED 04.11.2013 IN OP NO. 588 OF 2010 PASSED BY THE FAMILY COURT, PALAKKAD Exhibit P2 TRUE COPY OF THE INTERIM ORDER IN IA DATED 03.06.2015 OF HON'BLE HIGH COURT OF KERALA Exhibit P3 TRUE COPY OF THE RECEIPT DATED 24.06.2015 EVIDENCING DEPOSIT OF RS.1,50,000/ Exhibit P4 CERTIFIED COPY OF THE ORDER DATED 25.11.2020 IN E.A 101/2019 IN E.P NO. SALE AND ISSUE OF SALE CERTIFICATE TO THE RESPONDENTS Exhibit P5 TRUE COPY OF THE JUDGMENT DATED 26.03.2019 IN MAT APPL. NO. 150/2014 PASSED BY THIS

HON'BLE HIGH COURT OF KERALA Exhibit P6 CERTIFIED COPY OF THE JUDGMENT IN O.P.(FC) NO.484/21 DATED 02.02.2022 OF HON'BLE HIGH COURT OF KERALA Exhibit P7 CERTIFIED COPY OF THE ORDER IN E.A.65/15 DATED 15.07.2022 OF HON'BLE FAMILY COURT PALAKKAD Exhibit P8 CERTIFIED COPY OF THE ORDER DATED

17.09.2022 IN E.A.NO.49/22 IN E.A.NO66/2015 IN E.P.NO.11/2014 IN O.P.NO.588/2010 PASSED BY THE FAMILY COURT PALAKKAD

Exhibit P8A TRUE COPY OF THE PETITION FILED BY THE PETITIONER DATED 23.07.2015 IN E.A -6- FAMILY COURT, PALAKKAD Exhibit P8B TRUE COPY OF THE OBJECTIONS FILED BY THE RESPONDENTS HEREIN DATED NIL IN E.A 66/2015 IN E.P 11/2014 BEFORE THE FAMILY COURT, PALAKKAD Exhibit P9 CERTIFIED COPY OF THE ORDER DATED 17.09.2022 OF HON'BLE FAMILY COURT PALAKKAD IN E.A 66/2015 IN E.P 11/14

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