

Rosily vs John

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SooperKanoon Citation : sooperkanoon.com/1352164

Court : Kerala

Decided On : Jul-03-2023

Judge : Honourable Mr. Justice a.Muhammed Mustaque,Honourable Mrs. Justice Sophy Thomas

Appeal No. : Mat.Appeal/238/2023

Appellant : Rosily

Respondent : JOHN

Judgement :

& MAT.APPEAL NO. 337 OF 2023 AGAINST THE ORDER/JUDGMENT IN OP 172/2017 OF FAMILY COURT, APPELLANT/RESPONDENT IN OP: ROSILY W/O. KAVUNGAL JOHN, CHALAKUDY DESOM, KODASSERY VILLAGE, CHALAKUDY TALUK, PRESENT ADDRESS: ROSILY, C/O URUMEED M L, S/O. LONAPPAN, MUNDANMANI HOUSE, THUMBAKKOD, NEAR THUMBAKKOD CHURCH, VIA KANJIRAPPILLY, PIN - 680307

RESPONDENT/PETITIONER IN OP: AGED 68 YEARS S/O. KAVUNGAL KUNJUVAREED, KODASSERY VILLAGE, CHETTIKKULAM DESOM, CHALAKUDY TALUK, CHALAKUDY DESOM THRISSUR DISTRICT, PIN - 680 721. C.A.CHACKO

C.M.CHARISMA ON 03.07.2023, ALONG WITH Mat.Appeal.227/2023, 228/2023 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: Mat.Appeal No.227 of 2023 & conn.cases 2 & MAT.APPEAL NO. 227 OF 2023 AGAINST THE ORDER/JUDGMENT IN RP 24/2021 IN O.P No.1083 OF 2017 OF FAMILY COURT, IRINJALAKUDA APPELLANT/PETITIONER IN RP/PETITIONER: ROSY JOHN @ ROSILY W/O. KAVUNGAL JOHN, KIZHAKKE CHALAKUDY VILLAGE, CHALAKUDY DESOM, CHALAKUDY TALUK, PIN - 680307. RESPONDENT/RESPONDENT IN RP/RESPONDENT: AGED 68 YEARS S/O. KAVUNGAL KUNJUVAREED, KODASSERY VILLAGE, CHATTIKKULAM DESOM, CHALAKUDY TALUK, CHALAKUDY DESOM THRISSUR DISTRICT, PIN - 680721. Mat.Appeal No.227 of 2023 & conn.cases 3 & MAT.APPEAL NO. 228 OF 2023 AGAINST THE ORDER/JUDGMENT IN OP 915/2017 OF FAMILY COURT, APPELLANT/RESPONDENT 1 IN OP: ROSILY W/O. KAVUNGAL JOHN, R S ROAD, CHALAKUDY DESOM, KIZHAKKE CHALAKUDY VILLAGE, CHALAKUDY TALUK, PIN - 680307 RESPONDENT/PETITIONER IN OP: AGED 69 YEARS S/O. KAVUNGAL KUNJUVAREED, KODASSERY VILLAGE, CHETTIKKULAM DESOM, CHALAKUDY TALUK, CHALAKUDY DESOM, THRISSUR DISTRICT, PIN - 680721. Mat.Appeal No.227 of 2023 & conn.cases 4 & MAT.APPEAL NO. 231 OF 2023 AGAINST THE ORDER/JUDGMENT IN OP 172/2017 OF FAMILY COURT, APPELLANT/PETITIONER IN IA/RESPONDENT IN OP: ROSY JOHN @ ROSILY W/O. KAVUNGAL JOHN, CHALAKUDY DESOM & PO, KIZHAKKE CHALAKUDY VILLAGE, CHALAKUDY TALUK, PIN - 680307. RESPONDENT/RESPONDENT IN IA/PETITIONER IN OP: AGED 68 YEARS S/O. KAVUNGAL KUNJUVAREED, KODASSERY VILLAGE, CHATTIKKULAM DESOM, CHALAKUDY TALUK, CHALAKUDY DESOM, THRISSUR DISTRICT, PIN - 680721. Mat.Appeal No.227 of 2023 & conn.cases 5 & MAT.APPEAL NO.234 OF 2023 AGAINST THE ORDER/JUDGMENT IN OP 915/2017 OF FAMILY COURT, APPELLANT/PETITIONER IN IA/RESPONDENT IN OP: ROSY

JOHN @ ROSILY W/O. KAVUNGAL JOHN, RS ROAD, CHALAKUDY DESOM, KIZHAKKE CHALAKUDY VILLAGE, CHALAKUDY TALUK, PIN - 680307 RESPONDENT/RESPONDENT IN IA/PETITIONER IN OP: AGED 68 YEARS S/O. KAVUNGAL KUNJUVAREED, CHATTIKKULAM DESOM, KODASSERY VILLAGE, CHALAKUDY PO & TALUK, PIN - 680 721. Mat.Appeal No.227 of 2023 & conn.cases 6 & MAT.APPEAL NO. 238 OF 2023 AGAINST THE ORDER/JUDGMENT IN OP 642/2017 OF FAMILY COURT, APPELLANT/RESPONDENT IN OP: ROSILY W/O. KAVUNGAL JOHN, R S ROAD, CHALAKUDY DESOM, KIZHAKKE CHALAKUDY VILLAGE, CHALAKUDY TALUK, PIN - 680307 RESPONDENT/PETITIONER IN OP: AGED 69 YEARS S/O. KAVUNGAL KUNJUVAREED, KODASSERY VILLAGE, CHETTIKKULAM DESOM, CHALAKUDY TALUK, THRISSUR DISTRICT., PIN - 680721 Mat.Appeal No.227 of 2023 & conn.cases 7 & MAT.APPEAL NO. 260 OF 2023 AGAINST THE ORDER/JUDGMENT IN OP 642/2017 OF FAMILY COURT, APPELLANT/PETITIONER IN IA/RESPONDENT IN OP: ROSY JOHN @ ROSILY W/O. KAVUNGAL JOHN, CHALAKUDY DESOM & PO, KIZHAKKE CHALAKUDY VILLAGE, CHALAKUDY TALUK, PIN - 680307 RESPONDENT/RESPONDENT IN IA/PETITIONER IN OP: AGED 68 YEARS S/O. KAVUNGAL KUNJUVAREED, CHATTIKKULAM DESOM, KODASSERY VILLAGE, CHALAKUDY P O & TALUK, CHALAKUDY DESOM THRISSUR DISTRICT, PIN - 680 721. Mat.Appeal No.227 of 2023 & conn.cases 8 & MAT.APPEAL NO. 261 OF 2023 AGAINST THE ORDER/JUDGMENT IN OP 1083/2017 OF FAMILY COURT, APPELLANT/PETITIONER IN OP: ROSILY @ ROSY JOHN W/O. KAVUNGAL JOHN, KIZHAKKE CHALAKUDY VILLAGE, CHALAKUDY DESOM, CHALAKUDY TALUK, PIN - 680 RESPONDENT/S: AGED 68 YEARS S/O. KAVUNAL KUNJUVAREED, CHATTIKKULAM DESOM & P O, KODASSERY VILLAGE, CHALAKUDY TALUK, PIN - 680 721. Mat.Appeal No.227 of 2023 & conn.cases 9

JUDGMENT

Sophy Thomas, J.

The parties to these proceedings are husband and wife and their matrimonial issues dragged them into a number of litigations.

2. In the above appeals, the wife is the appellant and

husband is the respondent. Their marriage was solemnised on 19.05.1985 and four daughters were born in their lawful wedlock. But, their matrimonial life was miserable due to disparities arising out of emotional as well as financial matters. They are living separate since 03.03.2011. The husband filed O.P No.172 of 2017 for declaration of title over the immovable property and also for injunction. He filed O.P No.642 of 2017 for a decree of divorce on the ground of cruelty. He also filed O.P No.915 of 2017 claiming compensation from the wife for the cruelties extended to him. The wife filed O.P No.1083 of 2017 for setting aside a document with respect to the immovable property and to recover possession.

3. The Family Court, Irinjalakuda tried those four OPs

Mat.Appeal No.227 of 2023 & conn.cases 10 together. The wife remained ex parte in all the cases filed by the husband. In O.P No.1083 of 2017 filed by the wife, there was no proper prosecution. So, the OPs filed by the husband were decreed ex parte, and the OP filed by the wife was dismissed for default.

4. The wife filed petitions to set aside the ex parte decree in

O.P Nos.172 of 2017, 915 of 2017 and 642 of 2017 and restoration petition to restore OP No.1083 of 2017 which was dismissed for default. The Family Court dismissed her petitions. The above eight appeals are preferred by the wife against the ex parte judgments in the O.Ps and also against the orders in her petitions for setting aside the ex parte decree.

5. Heard learned counsel for the appellant and learned counsel for the respondent.

6. Admittedly, the appellant was set ex parte in the above

original petitions. She had entered appearance and filed counter in OP No.172 of 2017 and 915 of 2017. In OP No.642 of 2017, though she appeared and sought time for objection, it was not filed. O.P No.1083 of 2017 was filed by herself. So, obviously, Mat.Appeal No.227 of 2023 & conn.cases 11 she was aware of the proceedings pending before Family Court, Irinjalakuda, but she was not vigilant enough in defending/prosecuting her case.

7. According to the appellant, she could not appear before

court, as she had to go to Germany to attend the delivery of her daughter. When she returned, she was under quarantine due to Covid-19. Moreover, her counsel was under treatment due to some mental problems. So, she could not defend the cases filed by her husband, or to prosecute the case filed by her properly. Though she filed petitions to set aside the ex parte decree, that also could not be prosecuted properly.

8. Learned Family Court Judge found that the appellant did

not co-operate to dispose the cases and her intention was to delay the proceedings and to harass the respondent. The proceedings before the Family Court justifies the learned Family Court Judge in dismissing her petitions to set aside the ex parte decree. But, even then, considering the fact that the appellant is a lady who is a senior citizen, we are of the view that, let all the matters be decided on merit. If there is any kind of delaying Mat.Appeal No.227 of 2023 & conn.cases 12 tactics from the part of the appellant anymore, the learned Family Court Judge is given liberty to dispose the cases without any further delay. In the result, the ex parte judgments and orders impugned are hereby set aside and the Family Court, Irinjalakuda is directed to restore OP Nos.172, 642, 915, and 1083 of 2017 back to file, immediately on receipt of a copy of this judgment. The parties shall appear before the Family Court, Irinjalakuda on 01.08.2023 and the pleadings and steps if any shall be completed by the parties on or before 01.09.2023. The Family Court shall dispose the above OPs within a period of two months thereafter. With these directions, above Mat.Appeals stand allowed. Sd/- A.MUHAMED MUSTAQUE JUDGE Sd/- SOPHY THOMAS JUDGE smp