

Bobby George vs Anju Bobby George

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Court : Kerala

Decided On : Jan-11-2022

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

Appeal No. : OP (FC)/550/2021

Appellant : Bobby George

Respondent : Anju Bobby George

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE A.MUHAMMED MUSTAQUE & THE HONOURABLE MRS. JUSTICE SOPHY THOMAS
TUESDAY, THE 11TH DAY OF JANUARY 2022 / 21ST POUSHA, 1943
OP (FC) NO. 550 OF 2021 AGAINST THE ORDER DATED 23.10.2021
IN OP (INJ.) 423/2021 OF FAMILY COURT, KATTAPPANA
PETITIONERS: 1 BOBBY GEORGE, AGED 53 YEARS S/O. K.G GEORGE, KAVUMKOTTU HOUSE, KAIPATTOOR KARA, PATHANAMTHITTA DISTRICT, PIN 689 648 2 AMMINI GEORGE, AGED 75 YEARS W/O. K.G GEORGE, KAVUMKOTTU HOUSE, KAIPATTOOR KARA, PATHANAMTHITTA DISTRICT, PIN 689 648 BY

ADVS. V.S.AFSAL KHAN GEO GEORGE GRIGORY RESPONDENTS:

1 ANJU BOBBY GEORGE, AGED 46 YEARS W/O. BOBY GEORGE, KAVUMKOTTU HOUSE, KAIPATTOOR KARA, PATHANAMTHITTA DISTRICT, PIN 689 648 PRESENTLY RESIDING AT PALAKUNNEL ESTATE, PAMPUMPARA P.O, KADASSIKADAVU, IDUKKI, PIN 685 551

2 BRAYAN BOBBY GEORGE AGED 21 YEARS S/O. BOBY GEORGE, KAVUMKOTTU HOUSE, KAIPATTOOR KARA, PATHANAMTHITTA DISTRICT, PIN 689 648 PRESENTLY RESIDING AT PALAKUNNEL ESTATE, PAMPUMPARA P.O, KADASSIKADAVU, IDUKKI, PIN 685 551 3 THOMAS JOSEPH @ TOMY AGED 55 YEARS S/O. JOSEPH, KOZHIMALA HOUSE, ANAKKARA KARA, CHAKKUPALLAM VILLAGE, UDUMBANCHOLA TALUK, IDUKKI DISTRICT, PIN 685 551 BY ADV VARGHESE C.KURIAKOSE THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION ON 11.01.2022, ALONG WITH OP (FC).536/2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE & THE HONOURABLE MRS. JUSTICE SOPHY THOMAS TUESDAY, THE 11TH DAY OF JANUARY 2022 / 21ST POUSHA, 1943 OP (FC) NO. 536 OF 2021 AGAINST THE ORDER DATED 23.10.2021 IN OP (INJ.) 423/2021 OF FAMILY COURT, KATTAPPANA PETITIONERS/PETITIONERS IN OP (INJ.) 423/2021: 1 ANJU BOBBY GEORGE, AGED 46 YEARS W/O.BOBBY GEORGE, RESIDING AT KAVUMKOTTU HOUSE, KAIPATTOOR KARA, VALLICODE VILLAGE, KONNI TALUK, PRESENTLY RESIDING AT PALAKUNNEL ESTATE, PAMPUPARA.P.O, KADASSIKADAVU KARA, CHAKKUPALLAM VILLAGE, UDUMBANCHOLA TALUK, IDUKKI DISTRICT. 2 BRAYAN BOBBY GEORGE, S/O BOBBY GEORGE, RESIDING AT

KAVUMKOTTU HOUSE, KAIPPATTOOR KARA, VALLICODU VILLAGE, KONNI TALUK, PRESENTLY RESIDING AT PALAKUNNEL ESTATE, PAMPUPARA.P.O, KADASSIKADAVU KARA, CHAKKUPPALAM VILLAGE, UDUMBANCHOLA TALUK, IDUKKI DISTRICT.

BY ADVS. VARGHESE C.KURIAKOSE P.J.JOSE SUSANTH SHAJI ALBIN A. JOSEPH RESPONDENTS/RESPONDENTS IN OP (INJ.) 423/2021 : 1 BOBBY GEORGE, AGED 53 YEARS S/O.K.G.GEORGE, RESIDING AT KAVUMKOTTU HOUSE, KAIPPATTOOR KARA, VALLICODE VILLAGE, KONNI TALUK, PATHANAMTHITTA DISTRICT. 2 AMMINI GEORGE, AGED 75 YEARS W/O.K.G.GEORGE, RESIDING AT KAVUMKOTTU HOUSE, KAIPPATTOOR KARA, VALLICODU VILLAGE, KONNI TALUK, PATHANAMTHITTA DISTRICT. 3 THOMAS JOSEPH @ TOMY, AGED 55 YEARS S/O.JOSEPH, RESIDING AT KOZHIMALA HOUSE, ANAKKARA KARA, CHAKKUPALLAM VILLAGE, UDUMBANCHOLA TALUK, IDUKKI DISTRICT.

4 ALEX RAJA, AGED 45 YEARS S/O SOMAN, PROPPARA KARA, PRESENTLY AT NOBLE FINANCE AND UNIVERSAL ASSOCIATES, ANAKKARA KARA, CHAKKUPALLAM VILLAGE, UDUMBANCHOLA TALUK, IDUKKI DISTRICT AND ALSO HAVING ADDRESS AT KUMIRAYUPARAMBIL HOUSE, CHELLARKOVIL KARA, CHELLARKOVIL.P.O, ANAKKARA VILLAGE, UDUMBANCHOLA TALUK, IDUKKI DISTRICT. BY ADV V.S.AFSAL KHAN THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION ON 11.01.2022, ALONG WITH OP (FC).550/2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J U D G M E N T

A.MUHAMED MUSTAQUE, J.

These original petitions are filed challenging Ext.P6 order passed by the Family Court, Kattappana in I.A.No.4 of 2021 in O.P.(Inj.) No.423 of 2021.

2. Petitioners in O.P.(F.C).No.536 of 2021 are the petitioners in O.P.(Inj.) No.423 of 2021 and the petitioners in O.P.(F.C).No.550 of 2021 are the respondents in that O.P.

3. We refer the parties by name. Anju Bobby

George and her son Brayan Bobby George, approached the Family Court for permanent prohibitory injunction to prevent the respondents therein from trespassing into the properties scheduled as A and B. The respondents 1 and 2 are the husband and mother-in-law of Smt.Anju Bobby George's and respondents 3 and 4 Sri.Thomas Joseph and Alex Raja are alleged to be assisting Sri.Bobby George and Smt.Ammuni George to trespass into Plaint schedule properties illegally to commit waste therein.

4. I.A.No.4 of 2021 was filed for interim relief

of injunction and an ad-interim injunction was granted as prayed for with respect to plaint A and B schedule properties. Thereafter, on entering appearance by Bobby George and others, Family Court heard the I.A and granted the following reliefs:

(a) First respondent and second respondent are

restrained from trespassing into A schedule property and taking forcible possession of it and interfering with petitioners peaceful possession thereof and also committing any waste therein.

(b) Prayer to grant interim injunction with respect to B schedule property is disallowed.

(c) Ad interim injunction passed with respect to A scheduled property is made absolute. Ad interim injunction passed with respect to B scheduled property is vacated.

(d) Petitioners shall not prevent the

respondents from using the pathway running through the western side of A and B schedule property, that leads to the property of the mother of the first petitioner, as

shown in Ext.C1(a) rough sketch of the Advocate Commissioner.

5. Smt.Anju Bobby George and her son Brayan Bobby

George approached this Court by filing O.P.(F.C).No.536 of 2021, challenging the order disallowing the interim injunction in respect of B scheduled property, and also against granting an injunction relief in favour of Smt.Ammi George, allowing her to use a pathway running through the western side of A and B schedule property, without any obstruction from the part of Smt.Anju Bobby George and her son Brayan Bobby George.

6. Bobby George and Ammini George filed O.P. (F.C).No.550 of 2021 challenging the interim relief granted to Anju Bobby George and her son in respect of plaint 'A' schedule property.

7. We made an attempt for amicable settlement

between the parties, but it did not work out. Thereafter, we heard both counsel. We are called upon to decide the validity of the interim order invoking our power under Article 227 of the Constitution of India.

8. The Family Court had considered the

application on merit and granted the relief. We prima facie do not find any illegality with the order as above, except for granting the relief in favour of Smt.Ammi George. The Family Court appears to have over stepped the jurisdiction, in granting a relief in favour of Smt.Ammi George, without even there being a petition from her side. The right of way claimed by her is not a subject matter of the dispute. It cannot be termed as dispute coming under Section 7(d) of the Family Court Act. The right of way essentially is a civil right, which may independently exist of any marital dispute. The competent civil court alone has got jurisdiction to grant any relief in respect of property of persons who are not parties to the marriage, and the dispute is not with respect to any circumstance arising out of a marital relationship. The right of way claimed by the mother-in-law over the plaint schedule property has nothing to do with the marital relationship of Smt.Anju Bobby George and her husband. According to us, the order granting

relief in favour of Smt.Ammi George who has been wrongly mentioned in the order as mother of Smt.Anju Bobby George has to be vacated. Accordingly, we vacate relief

(d) granted in the impugned orders. We give liberty to Ammini George to approach the competent civil court for any appropriate relief in accordance with law.

9. Learned counsel appearing for Smt.Anju Bobby

George pointed out in the counter affidavit filed by Bobby George that he has admitted that possession of the B schedule property is with his father only, and therefore, he cannot object to the injunction relief over B schedule property. It is to be noted that B schedule property is a non-patta land and nobody has produced any registered document or title deed. Therefore the possessory title or interest over B schedule immovable property, can be decided only after allowing the parties to adduce evidence.

10. In respect of A schedule property, admittedly

title stands in the name of second petitioner namely Brayan Bobby George. It is for that reason the Family Court granted interim relief of injunction in respect of A schedule property. We, therefore, do not want to upset the finding of facts entered by the Family Court in granting the reliefs. Thus, annulling relief (d) in the impugned order, we dispose of the original petitions. Original Petition No.536 of 2021 is allowed to the extent of setting aside relief No. (d) in the impugned order. Original Petition No.550 of 2021 is dismissed. Sd/- A.MUHAMED MUSTAQUE, JUDGE Sd/- SOPHY THOMAS, JUDGE AS APPENDIX OF OP (FC) 550/2021 PETITIONERS' EXHIBITS: EXHIBIT P1 TRUE COPY OF THE ORIGINAL PETITIONER IN

O.P (INJ) NO. 423/2021 DATED 26-07-2021 FILED BY THE RESPONDENTS 1 AND 2 HEREIN BEFORE THE FAMILY COURT, KATTAPPANA EXHIBIT P2 TRUE COPY OF THE STATEMENT OF A/C NO 914010019867923 FROM 1-1-2018 TO 31-12- 2018 MAINTAINED BY THE 1ST PETITIONER IN AXIX BANK EXHIBIT P3 TRUE COPY OF THE EXTRACT OF BILLS OF CHEMICALS,

PESTICIDES ETC PURCHASED BY THE 1ST PETITIONER TO THE A AND B SCHEDULE PROPERTIES FOR THE CARDAMOM PLANTATION EXHIBIT P4 TRUE COPY OF THE ORDER DATED 17-09-2021 IN C4-3153/2021/K.DIS OF THE RDO, ADOOR EXHIBIT P5 TRUE COPY OF THE APPEAL DATED 22-10-201 FILED BY THE FATHER OF THE 1ST PETITIONER BEFORE THE DISTRICT COLLECTOR, PATHANAMTHITTA. EXHIBIT P6 TRUE COPY OF THE I.A NO. 4/2021 IN O.P

(INJ) NO. 423/2021 DATED 26-07-2021 OF

THE FAMILY COURT, KATTAPPANA. EXHIBIT P7 TRUE COPY OF THE COUNTER AFFIDAVIT IN I.A NO. 4/2021 IN O.P(INJ.) NO. LEARNED FAMILY COURT, KATTAPPANA. EXHIBIT P8 TRUE COPY OF THE COMMISSION REPORT IN I.A NO. 3/2021 IN O.P(INJ) NO. 423/2021 DATED 24-08-2021 OF THE FAMILY COURT, KATTAPPANA EXHIBIT P9 TRUE COPY OF THE OBJECTION FILED BY THE PETITIONERS DATED 28-09-2021 OF THE FAMILY COURT, KATTAPPANA EXHIBIT P10 TRUE COPY OF THE ORDER DATED 23-10-2021 IN IA. NO. 4/2021 IN O.P(INJ) 423/2021 PASSED BY THE FAMILY COURT, KATTAPPANA EXHIBIT P11 TRUE COPY OF THE COMPLAINT DATED 29-10- 2021 BY THE 1ST PETITIONER BEFORE THE DEPUTY SUPERINTENDENT OF POLICE, KATTAPPANA. APPENDIX OF OP (FC) 536/2021 PETITIONERS' EXHIBITS: EXHIBIT P1 TRUE PHOTOSTAT COPY OF THE ORIGINAL PETITION FILED BY THE PETITIONER INVOKING SECTION 7 OF THE FAMILY COURT ACT, 1984 DATED 26.07.2021 EXHIBIT P2 TRUE PHOTOSTAT COPY OF THE AGREEMENT DATED 19.01.2018 EXHIBIT P3 TRUE PHOTOSTAT COPY OF THE POWER OF ATTORNEY DATED 02.03.2018 EXHIBIT P4 TRUE PHOTOSTAT COPY OF THE DOCUMENT IN EXCHANGE DEED DATED 28.02.2018 EXECUTED IN RELATION TO THE B SCHEDULE PROPERTY EXHIBIT P5 TRUE PHOTOSTAT COPY OF THE COUNTER

AFFIDAVIT FILED IN I.A.NO.4/2021 IN O.P.(INJ.)NO.423/2021 ON THE FILES OF FAMILY COURT, KATTAPPANA DATED 24.08.2021 EXHIBIT P6 TRUE PHOTOSTAT COPY OF THE ORDER DATED 23.10.2021 RENDERED I I.A.NNO.4/2021 IN O.P.(INJ.)N.423/2021 ON THE FILES OF THE FAMILY

COURT,KATTAPPANA.

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