

Manoj vs Deepa Manoj

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Court : Kerala

Decided On : May-31-2019

Judge : Honourable Mr.Justice a.M.Shaffique,Honourable Mr.Justice N.Anil Kumar

Appeal No. : Mat.Appeal/643/2011

Appellant : MANOJ

Respondent : Deepa Manoj

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE & THE HONOURABLE MR.JUSTICE N.ANIL KUMAR FRIDAY, THE 31ST DAY OF MAY 2019 / 10TH JYAISHTA, 1941 Mat.Appeal.No. 643 of 2011 AGAINST THE JUDGMENT IN OPOS 1010/2008 of FAMILY COURT, ALAPPUZHA DATED 02-12-2010 APPELLANT/PETITIONER: MANOJ, AGED 37 YEARS, S/O. SADANANDAN, VELATHANPARAMBIL, PERISSERY MURI,, PULIYOOR VILLAGE, CHENGANNUR TALUK, ALAPPUZHA DISTRICT. BY ADV. SRI.IYPE JOSEPH RESPONDENT/RESPONDENT: DEEPA MANOJ, AGED 33 YEARS, D/O. P.V. INDIRA, DEEPA VILASOM VEETIL,, AREEKKARA,

MULAKUZHA VILLAGE, CHENGANNUR,, ALAPPUZHA DISTRICT. BY ADV. SRI.S.MOHANAN THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD ON 31.05.2019, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

SHAFFIQUE, J This appeal is filed by the petitioner in O.P.(OS).No.1010/2008 of the Family Court, Alappuzha. The suit was filed for recovery of an amount Rs.7,00,000/-(Rupees seven lakhs only). The allegation was that the property was purchased in the name of wife and a building was constructed by him expending his own earnings. Matrimonial

issues had arisen on account of the alleged illicit relationship the wife

had. Hence he claimed the amount back.

2. The above case was heard along with O.P. (OS).No.1163/2008. Common evidence was taken in the case. On behalf of the petitioner three witnesses were examined as PW1 to PW3 and the wife was examined as RW1. Exts.A1 to A7 were the documents produced and marked.

3. Apparently when a claim for money is raised which is

disputed by the defendant, necessarily evidence has to be adduced. When it is alleged that the plaintiff's money was used for construction purpose, the source of fund is to be proved by producing bank statement and how money was transferred to the defendant/or any other person undertaking the construction. In this case, other than the oral testimony of PW1 to PW3 no documentary evidence has been

adduced to prove the source of funds. Under such circumstances, when a disputed fact has not been proved before court to the satisfaction of the court below, it may not be possible to grant a decree as such. The Family Court also found it difficult to grant a decree on account of the fact that no documentary evidence was produced to prove the transfer of funds. We are also of the view that

in the absence of any material to arrive at a finding that the petitioner had expended Rs.7,00,000/- (Rupees seven lakhs only) for construction of the house, it is difficult to

grant a decree. We don't find any ground to interfere in the judgment

of the Family Court. The Mat.Appeal is dismissed. A.M.SHAFIQUE JUDGE
N.ANIL KUMAR kp True copy JUDGE P.A. To Judge

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