

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE
&
THE HONOURABLE MRS. JUSTICE SOPHY THOMAS
MONDAY, THE 21ST DAY OF AUGUST 2023 / 30TH SRAVANA, 1945
MAT.APPEAL NO. 418 OF 2023
AGAINST THE ORDER/JUDGMENT IN OP 1697/2013 OF FAMILY COURT,
THIRUVANANTHAPURAM

APPELLANT/ORIGINAL FIRST RESPONDENT:

V.V JAYA, AGED 52 YEARS
D/O VARGHESE, RESIDING AT 'SREE',
GROUND FLOOR, R.G. 163, T.C. NO.
7/1491, KOCHULLOOR, MEDICAL COLLEGE.
P.O., THIRUVANANTHAPURAM, PIN - 695011.

BY ADVS.
GOUTHAM KRISHNA U.B.
C.UNNIKRISHNAN (KOLLAM)
VIVEK NAIR P.
NIDHI BALACHANDRAN
ANANDA PADMANABHAN
UTHARA A.S
VIJAYKRISHNAN S. MENON

RESPONDENTS/ORIGINAL PETITIONERS 1 & 2 AND ORIGINAL SECOND RESPONDENT:

- 1 M.P. RAJESWARAN NAIR
AGED 88 YEARS
S/O. LATE PADMANABHA PILLAI, 'SREE', 1ST
FLOOR, R.G.163, T.C. NO. 7/1491,
KOCHULLOOR, MEDICAL COLLEGE,
THIRUVANANTHAPURAM, PIN - 695011.

- 2 RAJASREE CHANDRASEKHAR
AGED 58 YEARS
D/O. M.P. RAJESWARAN NAIR, 'SREE', 1ST
FLOOR, R.G. 163, T.C. NO. 7/149)
KOCHULLOOR, MEDICAL COLLEGE P.O.,
THIRUVANANTHAPURAM - 695 011, NOW RESIDING
AT 9 A, HOUGHEY AVENUE, HILLSBOROUGH,

AUCKLAND: 1004, NEWZELAND.

3 RAJ KUMAR
AGED 53 YEARS
S/O. M.P. RAJESWARAN NAIR, RESIDING AT PWA
618, T.C. 6/2395, PRASANTH NAGAR, MEDICAL
COLLEGE P. O., THIRUVANANTHAPURAM, PIN -
695011.

BY ADVS.
M.AJITH (KARICODE)
N.P.PRADEEP
R.MOHANA BABU (K/000181/1989)

THIS MATRIMONIAL APPEAL HAVING COME UP FOR ADMISSION ON
21.08.2023, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

J U D G M E N T

Sophy Thomas, J.

The 1st respondent in OP No.1697 of 2013 on the file of Family Court, Thiruvananthapuram, is the appellant herein, challenging the judgment dated 17.02.2023.

2. OP No.1697 of 2013 was filed by the father-in-law and sister-in-law of the appellant for recovery of possession of building No.TC 7/1491 with mesne profits. The 2nd respondent therein was her husband.

3. The petitioners in the OP contended that, the petition schedule building and 95 cents of land comprised in survey No.1531 of Ulloor village belonged to Smt.Sreenidhi Devi, the wife of the 1st petitioner and the mother of 2nd petitioner and 2nd respondent. After her death, partition was effected among her legal heirs by which the 2nd petitioner obtained the plot including the petition schedule building. The 2nd respondent married the 1st respondent in the year 1994 and thereafter they were living in the petition schedule building. But, subsequently, they got separated and their marriage was dissolved as per the decree dated 02.12.2015 in Mat.Appeal No.312 of 2007. After effecting

partition, the petitioners filed OP No.1697 of 2013 for getting recovery of possession of the schedule building from the 1st respondent with mesne profits @ Rs.4,000/- per month. She vehemently opposed that OP contending that, it was her matrimonial home and since marriage she was residing there with her husband and children, and it is her shared household and so, she cannot be evicted therefrom.

4. The Family Court formulated necessary issues and the parties went on trial by marking Exts.A1 to A15 from the side of the petitioners and examining DW1 and marking Exts.B1 to B19 from the side of the 1st respondent.

5. After hearing both sides, learned Family Court partly decreed the OP, denying mesne profits, and directing the 1st respondent to hand over vacant possession of the petition schedule building to the 2nd petitioner within a period of four months and in case of default, the 2nd petitioner was permitted to evict her as per due process of law. Aggrieved by that judgment and decree, the 1st respondent has preferred this appeal.

6. Now let us see whether there is any illegality, irregularity

or impropriety in the impugned judgment warranting interference by this Court

7. Heard learned counsel for the appellant and learned counsel for the respondents.

8. For the purpose of convenience, the parties shall be addressed according to their status in the Mat.Appeal.

9. Admittedly, the marriage between the appellant and 3rd respondent was solemnised on 17.05.1994. After marriage, they were living together in the petition schedule house along with the parents of the 3rd respondent. 95 cents of property and two buildings situated therein, originally belonged to the mother of the 3rd respondent. She died in the year 1995. Thereafter the respondents, who are her legal heirs, effected partition of that property, by which the petition schedule building was included in the share of the 2nd respondent. The matrimonial life of the appellant and the 3rd respondent went into rough weather, and they started living separate. The respondents 1 and 2 filed OP No.1697 of 2013 for recovery of possession of the petition schedule building from the appellant as that building absolutely belonged to the 2nd respondent. Though the appellant

vehemently opposed that petition, the Family Court found that, she had no right, title or interest over that property, as the marriage between the appellant and 3rd respondent was dissolved as early as in the year 2015.

10. The interesting question to be answered in this appeal is, how long a divorced wife can cling on to the matrimonial home, claiming it as her shared household. Obviously, there is no dispute with respect to the title of the petition schedule building by the 2nd respondent. It is an admitted fact that, the marriage between the appellant and 3rd respondent was dissolved by this Court on 02.12.2015 as per judgment in Mat.Appeal No.312 of 2007. The only claim which the appellant is now raising is that, ever since the marriage in the year 1994, she was residing in the petition schedule house, and so, she cannot be evicted. She has no case that, she is having any title or ownership over that property. So, we are in full agreement with the finding of the Family Court that, she is liable to be evicted from the petition schedule building.

11. Now let us see whether her claim for right of residence

in the petition schedule building as a shared household, is liable to be entertained. In **Ramachandra Warrior** vs. **Jayasree** [2021 (2) KLT 816], a Division Bench of this Court held that,

- “(i) A divorced wife would not be entitled to the right of residence conferred under S.17 under the Protection of Women from Domestic Violence Act, 2005, for reason of that right being available only to a woman in a domestic relationship.
- (ii) A divorced wife would be included under the definition ‘aggrieved person’. A divorced wife occupying a shared household can be evicted only in accordance with law. A divorced wife can approach the Magistrate’s Court for an order under S.19 if she is residing in the shared household. The residence orders passed in such cases, would be subject to any proceeding for eviction in accordance with law, initiated by the husband, as contemplated under S.17(2).
- (iii) There can be no order to put a divorced woman in possession of a shared household, from where she had separated long back, and the relief can only be of restraining dispossession”.

12. Admittedly, the appellant and 3rd respondent got separated in the year 2004 and the 3rd respondent filed OP No.1147 of 2004, for dissolution of marriage. Though he could not succeed before the Family Court, in Mat.Appeal, he was given

a decree for dissolution of marriage as early as on 02.12.2015. Meanwhile, the appellant filed MC No.13 of 2008 under Section 12 of the Protection of Women from Domestic Violence Act, and that was dismissed for default. Subsequently, she filed MC No.12 of 2012 under the very same provision seeking orders of residence and compensation. That MC was dismissed on 30.04.2022, ie. long after dissolving their marriage. The learned Additional Chief Judicial Magistrate, Thiruvananthapuram while disposing that MC found that, being the divorced wife, she was bound to shift her residence and she could have asked for alternate accommodation from her previous husband. But, she was not ready to accept the offer made by her previous husband, that he could transfer a double storied building in his name at Chempazhanchy, so that she could live in that building. The learned Additional Chief Judicial Magistrate went on to say that, the appellant herein was taking an adamant stand, and in fact she has been committing domestic violence against her ex-husband, so as to wreak vengeance against him. As no domestic violence was proved against the 3rd respondent, the MC filed by the appellant was dismissed.

13. It has come out in evidence that, the appellant was trying all means to continue in the petition schedule building, and she was filing cases one after another against her husband and in-laws. She even challenged the partition deed executed by the legal heirs of deceased Sreenidhi Devi, though she had no title or ownership over that property. She filed OP No.258 of 2012 for recovery of 50 sovereigns of gold ornaments and to declare the partition deed as a voidable document, and also to set aside the subsequent sale deeds executed pursuant to that partition deed. That OP was dismissed vide Ext.A8 judgment. She filed OP No.274 of 2012 for past and future maintenance. In the year 2021, she filed OP No.1115 of 2021 for recovery of 200 sovereigns of gold ornaments.

14. Pending appeal, we had the opportunity to interact with the parties, to try for an amicable settlement. The 3rd respondent offered an alternate accommodation for the appellant in his two storied building at Chempazhanthy and he even offered her the rent due from the ground floor of that building. But, she was adamant in her stand that, as she was residing in the petition schedule building ever since the marriage, she wants to live there,

till her death.

15. Going by Section 19(f) of the Protection of Women from Domestic Violence Act, *while disposing an application under subsection (1) of Section 12, the Magistrate may, on being satisfied that domestic violence has taken place, pass a residence order directing the respondent to secure same level of alternate accommodation for the aggrieved person as enjoyed by her in the shared household or to pay rent for the same, if the circumstances so require.* In Ext.A14 order in MC No.12 of 2012, the learned Magistrate found that, no domestic violence was there and so, the MC was dismissed. Section 17(2) of the Protection of Women from Domestic Violence Act says that, *the aggrieved person shall not be evicted or excluded from the shared household or any part of it by the respondent save in accordance with the procedure established by law.*

16. By the impugned judgment, the Family Court ordered eviction of the appellant from the petition schedule building in accordance with the procedure established by law, and her claim for residence in that building, as a shared household cannot supersede the decree for eviction granted by a competent civil

court. In any view of the matter, the appellant has no right to reside in the petition schedule building and so, she is bound to vacate that building forthwith.

In the result, the appeal fails and hence dismissed. The appellant is directed to vacate the petition schedule building forthwith and in default, the 2nd respondent, who is the owner of that building, can approach the Family Court, and in that event, the Family Court has to see that the 2nd respondent is put in possession of the petition schedule building, without further delay.

Sd/-

**A.MUHAMED MUSTAQUE
JUDGE**

Sd/-

**SOPHY THOMAS
JUDGE**

smp

APPENDIX OF MAT.APPEAL 418/2023

PETITIONER ANNEXURES

Annexure A1 A TRUE COPY OF THE ORDER OF THE HON'BLE
MUNSIFF COURT, THIRUVANANTHAPURAM DATED
29.06.2013 IN I.A. NO. 7010/2012 IN O.S.
872/2006 RETURNING THE PLAINT TO THE PLAINTIFF
FOR PRESENTATION BEFORE THE FAMILY COURT

Annexure A2 A TRUE COPY OF PARTITION DEED NO. 363/2008
ENTERED INTO BETWEEN THE RESPONDENTS DATED
25.01.2008