

(2012) 03 KL CK 0198
In the High Court Of Kerala
Case No : OP (FC) . No. 818 of 2012 (R)

M. Ramachandran Pillai

APPELLANT

Vs

Sofia, Anuja R. and Akash R. (Respondents 2 and 3 Are
Minors and Are Represented By Their Mother and Present
Custodian The Ist Petitioner Herein)

RESPONDENT

Date of Decision : 28-03-2012

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2012) 03 KL CK 0198

Hon'ble Judges : M.L. Joseph Francis, J;K.M. Joseph, J

Bench : Division Bench

Advocate : Nidhi Balachandran, for the Appellant; S. Santhosh Kumar and Smt.
P. Lissy Jose, for the Respondent

Judgement

K.M. Joseph, J.—Petitioner has approached this Court seeking the following reliefs :

- (i) Call for the records pertaining to Ext.P5 suit and quash the same.
- (ii) Direct the lower court to lift the attachment passed in Ext.P3 Execution Petition and Ext.P6 I.A. on accepting a bond from the petitioner herein to the effect that he shall deposit the amount covered by Ext.P3 on selling the property covered by Ext.P6 attachment petition.

Briefly put, the case of the petitioner is as follows : Petitioner is the deserted husband of the first respondent and father of respondents 2 and 3 minor children. The marriage between the petitioner and first respondent was registered under the Special Marriage Act, being a love marriage and the parties belong to two different communities. Their relationship strained and the matter ended in litigation. Ext.P1 purports to be the compromise agreement. The petitioner agreed to pay Rs. 3,28,000/- to the first respondent and he has paid the amounts in two instalments as per Ext.P2 series produced. Though the first

part of the compromise with regard to the payment is complied with, the petitioner could not deposit the amount in the name of the children since the petitioner could not sell his sole property, as intended. Consequently, the respondent/wife filed E.P. No. 62/11 before the Family Court, Kollam (Ext.P3) for realization of the amount. Ext.P4 is produced to show that the petitioner is indebted. Petitioner is in possession of 12 cents of property in Kollam West Village and he wants to sell that property for clearing out his liabilities, including the amount due to the minor children. Accordingly, when he was trying to find out a purchaser to sell out the property, in addition to Ext.P3 and the attachment petition(Ext.P6), respondents filed a fresh suit as O.P.1544/11 before the Family Court, Kollam(Ext.P5) claiming maintenance to the children to the tune of Rs. 20,000/- per month to the second petitioner and Rs. 17,500/- per month to the third petitioner with past claim at the same rate.

2. Conditional attachment is ordered on Ext.P6 petition. The petitioner filed Ext.P7 written statement to Ext.P5 suit and also Ext.P8 objection to Ext.P6 attachment petition. Ext.P9 is the advancement petition. The first respondent is working as Assistant Divisional Engineer in B.S.N.L. and she is getting a monthly salary of Rs. 50,000/- . According to the petitioner, he is getting an average monthly income of Rs. 20,000/- . Ext.P10 purports to be the certificate. Out of the amount, more than half is necessary for his journey alone in connection with the job.

3. We heard learned counsel for the petitioner and the learned counsel for the respondents. As far as the first prayer is concerned, we do not think that this is a case where we should consider the said prayer in a proceeding under Article 227 of the Constitution of India. We feel that however, we leave it pen to the petitioner to raise all the contentions before the Family Court, including the contention that the suit is not maintainable in view of the compromise between the parties. As far as the second prayer is concerned, we are of the following view : The petitioner has already filed objection to Ext.P6 and a final decision is yet to be taken. No doubt, learned counsel for the petitioner points out that the Family Court, Kollam is not sitting. However, in this regard, we direct that the objections of the petitioner will be considered by the District Judge-in-charge of the Family Court, Kollam, and a decision will be taken thereon at the earliest. As far as the attachment effected in the E.P. also, we relegate the petitioner to his remedies in regard to the same before the execution court itself.

The Original Petition (Family Court) is disposed of as above.