

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE AMIT RAWAL

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THE HONOURABLE MRS. JUSTICE C.S. SUDHA

MONDAY, THE 11TH DAY OF DECEMBER 2023 / 20TH AGRAHAYANA, 1945

OP (FC) NO. 274 OF 2023

AGAINST THE ORDER/JUDGMENT IN OP(OTHERS) 373/2022 OF FAMILY COURT, KOLLAM

PETITIONER/PETITIONER/PETITIONER:

ARCHANA PIUS
AGED 49 YEARS, D/O PIUS JOSEPH PUTHENPURACKAL,
MANGAD P.O, KANDACHIRA, MANGAD, 680584
(NOW RESIDING AT 20 HOMEVIEW ROAD, BRAMPTON,
ONTARIO ,CANADA) REPRESENTED BY HER POWER OF ATTORNEY HOLDER
MR. JOSE TOMY PIUS, AGED 60 YEARS, SON OF PIUS JOSEPH,
RESIDENT OF PUTHENPURACKAL,
MANGAD PO, KOLLAM, PIN - 691015

BY ADVS.
JOHNSON GOMEZ
S.BIJU (KIZHAKKANELA)
SANJAY JOHNSON
ARUN JOHNY
DEEBU R.
ABIN JACOB MATHEW
REVATHI.B

RESPONDENT//RESPONDENT/RESPONDENT:

SHINE
AGED 49 YEARS, S/O V. GOPALAN NAIR, NIRMALYAM ,
PUTHEN MADOM, THEVALLY CHERRY, KOLLAM WEST VILLAGE, THEVALLY
P.O, KOLLAM, PIN - 691009

BY ADVS.
R.ANIL R
THOMAS SABU VADAKEKUT(KL/001082/2017)
MAHESH BHANU S.(K/1620/2018)
RESSIL LONAN(K/1251/2020)
K.S.KIRAN KRISHNAN(K/3514/2022)

THIS OP (FAMILY COURT) HAVING BEEN FINALLY HEARD ON 11.12.2023,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



JUDGMENT

Amit Rawal, J.

1. The question of law raised in the present OP(FC) is whether anti-suit injunction by one of the spouse can be maintainable against another spouse who had instituted a suit in Canada on various claims.

2. To answer the aforementioned question, the facts in brief are as under:

Marriage between the parties was solemnized on 11.12.1999. Two children are born out of the wedlock, elder one is aged 19 years and the younger 16 years. Both husband and wife migrated to Canada and doing their jobs meant for and through hard work acquired properties in Canada. Unfortunately, bitterness in the relationship resulted into a discord necessitating the wife to institute a divorce petition O.P.No.34/2021 which is pending adjudication and the husband had also appeared through counsel. Respondent is stated to have put in appearance, proceeded *ex parte*. An *ex parte* divorce decree is stated to have been passed



though the order has not been issued. Husband invoked the jurisdiction of Ontario Court, Canada and raised the following multifarious claims:

11. Support for chil(ren)-table amount
12. Support for child(ren)-other than table amount
13. Decision-making responsibility for child(ren)
14. Parenting time with child(ren)
15. Restraining/non-harrassment order
16. Indexing spousal supported
17. Declaration of percentage
18. Guardianship over child's property
20. Equalization of net family properties.

3. It is a matter of record that in 2019 in respect of a joint property husband instituted suit for partition at Kollam an *ex parte* preliminary decree has been passed and application for setting aside *ex parte* decree is stated to be pending adjudication. Out of various reliefs in the petition in Canada one relief pertains to property. Apprehending that the property may not include the property in India, the jurisdiction of Family Court, Kollam, was



invoked as per Section 7(1)(d) of the Family Courts Act. Along with that an application under Order 39 Rule (1)(2) has been filed which has been dismissed. It is in that circumstances, the present petition has been filed.

4. Learned counsel appearing on behalf of the petitioner wife made reference to the explanation (d) to Section 7(1) of the Act as well as 41 of the Specific Relief Act and the judgment of Division Bench of this Court in **George Koshy v. Sarah Koshy** [2021 (3) KHC 268]. The aforementioned judgment has been passed keeping in view the judgment rendered by the Supreme Court in **Dinesh Singh Thakur v. Sonal Thakur** [2018 KHC 6299]. The doctrine of *lex situs* has to be applied in the context of the applicability of law in terms of the contract or otherwise. There was no contract between husband and wife with regard to the properties in India. Once the husband had already invoked the jurisdiction in respect of joint property claiming partition, cannot, for the same relief be permitted to continue with the suit in Kerala. But the court below noticing the fact that the suit is maintainable refused to grant injunction. In fact the judgment of the Supreme



Court in **Dinesh Singh Thakur's** was based upon the admission of the wife as she was living in USA and the divorce petition was also pending. It was not pertaining to other reliefs like property etc.

5. On the other hand, learned counsel appearing for the respondent-husband supported the impugned order by submitting that anti-suit injunction as sought for would not be maintainable in view of the provisions of Section 41 of the Specific Reliefs Act. The reliefs claimed in the Canadian Court are multifarious and not confined to the property as tried to be projected, but did not deny the *ex parte* preliminary decree in respect of the joint property by court in Kerala and also the factum of divorce petition. Both the parties have jointly purchased the properties. Certain reliefs with regard to the care and custody of the children also to be taken care of.

6. We have heard the learned counsel for the parties and appraised paper book.

7. On perusal of the reliefs in the petition pending in Court at Onatario, Canada, no doubt the majority of the reliefs cannot be



entertained in any suit by the Courts in India except the claim with regard to the property. Canadian court would not have jurisdiction with regard to the property/properties located in Kerala. Either of the parties have to seek relief by filing a suit in court having proper jurisdiction. This aspect of the matter has gone unnoticed while rejecting the interim application. Court should have been wary in applying the principles culled out in the judgment of **Dinesh Singh Thakur's** case as it was based upon the admission of wife and pertaining to only divorce proceedings which has already been pending and adjudicated upon, though the copy of the order is yet to be made available. Section 41 of the Specific Reliefs Act prohibits any person to claim the relief as sought for that would apply in respect of suits to be instituted in India but not in Canada. Therefore, the principles could not strictly be applicable for the relief as sought for.

Keeping in view the peculiar facts and circumstances narrated above, we modify the order of the trial court and injunct respondent No.1 not to stake the claim in respect of properties in joint ownership or in individual names situated in India. It is made



clear that as regards other reliefs or reliefs with regard to the property in Canada, there shall be no such injunction. The question of law raised above is answered accordingly. Petition stands disposed off.

Sd/-

AMIT RAWAL
JUDGE

Sd/-

C.S. SUDHA
JUDGE

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HIGH COURT OF KERALA
CERTIFIED COPY



APPENDIX OF OP (FC) 274/2023

PETITIONER EXHIBITS

- Exhibit P1 A TRUE COPY OF THE ORIGINAL SUIT FILED BY THE PETITIONER IN OP(OTHERS) NO. 373/2022 BEFORE THE FAMILY COURT, KOLLAM
- Exhibit P2 A TRUE COPY OF THE APPLICATION FOR TEMPORARY INJUNCTION IA NO. 2 OF 2022 IN OP (OTHERS) NO. 373 OF 2022 FILED BY THE PETITIONER BEFORE THE FAMILY COURT, KOLLAM
- Exhibit P2 (a) A TRUE COPY OF THE OBJECTION IA NO. 2 OF 2022 IN OP (OTHERS) NO. 373 OF 2022 FILED BY THE PETITIONER BEFORE THE FAMILY COURT, KOLLAM FILED BY THE RESPONDENT
- Exhibit P3 A TRUE COPY OF THE ORDER DATED 08/08/2022 IN OP(FC) NO. 444/2022 PASSED BY THIS HON'BLE COURT
- Exhibit P4 A TRUE COPY OF THE JUDGMENT DATED 3RD NOVEMBER 2022 PASSED BY THIS HON'BLE COURT IN OP(FC) NO. 444/2022
- Exhibit P5 A TRUE COPY OF THE ORDER DATED 26TH NOVEMBER 2022 IN IA NO. 2/2022 IN OP. NO. 373/2022 PASSED BY THE HON'BLE FAMILY COURT KOLLAM
- Exhibit P6 A TRUE COPY OF THE PETITION FILED BY THE RESPONDENT BEFORE THE SUPERIOR COURT OF JUSTICE, ONTARIO, CANADA, ON 13.06.2022 AS CASE FILE NUMBER FS -22-0067-00
- Exhibit P7 A true copy of the plaint in OP(Others) No. 742 of 2019 along with the english translation filed by the Respondent before the Family Court Kollam