

"C.R."

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

&

THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR

WEDNESDAY, THE 12TH DAY OF APRIL 2023 / 22ND CHAITHRA, 1945

O.P. (FC) NO. 704 OF 2022

AGAINST THE ORDER DATED 23.11.2022 IN I.A.NO.11 OF 2022
IN O.P.NO.87 OF 2022 ON THE FILE OF THE FAMILY COURT,
PALAKKAD

PETITIONERS:

1

[REDACTED]

2

[REDACTED]

BY ADVS.
JACOB SEBASTIAN
K.V.WINSTON
ANU JACOB
DIVYA R. NAIR

RESPONDENT:

[REDACTED]

BY ADVS.
SHYAM S
N.K.KARNIS

O.P.(FC) Nos.704 and 721 of 2022

THIS OP (FAMILY COURT) HAVING COME UP FOR FINAL HEARING ON 04.04.2023, ALONG WITH OP (FC).721/2022, THE COURT ON 12.04.2023 DELIVERED THE FOLLOWING:

O.P.(FC) Nos.704 and 721 of 2022

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

&

THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR

WEDNESDAY, THE 12TH DAY OF APRIL 2023 / 22ND CHAITHRA, 1945

O.P. (FC) NO. 721 OF 2022

AGAINST THE ORDER DATED 23.11.2022 IN I.A.NOs.2 AND 9 OF
2022 IN O.P.NO.87 OF 2022 ON THE FILE OF THE FAMILY
COURT, PALAKKAD

PETITIONERS:

1

[REDACTED]

2

[REDACTED]

BY ADVS.
JACOB SEBASTIAN
K.V.WINSTON
ANU JACOB
DIVYA R. NAIR

O.P.(FC) Nos.704 and 721 of 2022

RESPONDENT :



BY ADVS.
SHYAM S
N.K.KARNIS

THIS OP (FAMILY COURT) HAVING COME UP FOR FINAL HEARING ON 04.04.2023, ALONG WITH OP (FC).704/2022, THE COURT ON 12.04.2023 DELIVERED THE FOLLOWING:

JUDGMENT**"C . R . "**P.G. Ajithkumar, J.

The petitioners in O.P.No.87 of 2022 before the Family Court, Palakkad have filed these Original Petitions under Article 227 of the Constitution of India.

2. In O.P.(FC) No.704 of 2022 the petitioners challenge the order of the Family Court dated 23.11.2022 in I.A.No.11 of 2022 in O.P.No.87 of 2022. That interlocutory application was filed by the petitioners seeking an order of attachment before judgment. The Family Court allowed that application in part and ordered attachment of the property to secure an amount of Rs.7,50,000/-.

3. In O.P.(FC) No.721 of 2022 the petitioners challenge the common order of the Family Court dated 23.11.2022 in I.A.Nos.2 and 9 of 2022 in O.P.No.87 of 2022. The petitioners filed I.A.No.2 of 2022 seeking an order of temporary injunction restraining the respondent from alienating or committing any act of waste in the petition schedule property. The Family Court on 2.3.2022 passed an

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interim injunction. The respondent filed I.A.No.9 of 2022 seeking to vacate the order of injunction. The Family Court as per the impugned common order dismissed I.A.No.2 of 2022 and allowed I.A.No.9 of 2022.

4. On 22.12.2022, notice on admission was directed to be served on the respondent in O.P.(FC) No.704 of 2022. An interim order to retain the petition schedule property under the attachment was granted for one month. The interim order has been extended from time to time.

5. On 04.01.2023, notice on admission was directed to be served on O.P.(FC) No.721 of 2022 and directed to list this Original Petition along with O.P.(FC) No.704 of 2022.

6. The respondent entered appearance and filed counter affidavits in both cases.

7. Heard the learned counsel appearing for the petitioners and the learned counsel appearing for the respondent.

8. The petitioners are the daughters of the respondent. Petitioners No.1 and 2 are now aged 26 years

and 21 years respectively. From the rival pleadings, it appears that there was total estrangement in the marital relationship between the mother of the petitioners and the respondent, and there were litigations between them. As a consequence, the petitioners have been residing with their mother separated from the respondent.

9. The petitioners have filed O.P.No.87 of 2022 before the Family Court, Palakkad, seeking realisation of Rs.45,92,600/- towards their marriage expenses. They also seek a decree creating charge for the said amount on the petition schedule property. The petitioners filed I.A.No.2 of 2022 to get an order of temporary injunction restraining the respondent from alienating or committing any act of waste in the petition schedule property. The petitioners contended that the respondent purchased the petition schedule property utilising the fund raised by selling the gold ornaments of their mother and other financial help obtained from their mother and her family members. A residential house was constructed on that property. Going by the pleadings of the petitioners,

the respondent has been residing in that house. The petitioners would contend that if the property is alienated or some acts of mischief are committed thereon, their right to realise the amount claimed in the original petition would be hampered. They, therefore, sought an order of temporary injunction.

10. In I.A.No.11 of 2022, the petitioners contended that the respondent has been trying to alienate the petition schedule property along with the building thereon, and in such an event the petitioners would not be able to realise the amount due under the decree that may be passed in O.P.No.87 of 2022. Accordingly, they sought an order of attachment.

11. The respondent resisted both those applications by contending that the property and the building thereon absolutely belong to him and he was not liable to pay any amount to the petitioners. He claimed that all the educational expenses of the petitioners were met by him and his wife had been maintaining a hostile attitude towards him. He has

pointed out that there occurred an incident of her, along with her brother, trespassing into the building in the petition schedule property and committing various misdeeds there, including taking away the documents, regarding which a crime was registered by the police. He is suffering from serious ailments, for treatment of which he has to incur huge expenses. The attempt of the petitioners is to avoid the respondent from raising funds for meeting such expenses.

12. After considering the rival contentions, the Family Court held that there was no reason for granting an order of injunction, particularly when I.A.No.11 of 2022 seeking an order of attachment before judgment was already filed. The Family Court holding that the petitioners were entitled to claim only the minimum required expenses for the marriage, held that an attachment for an amount of Rs.7,50,000/- would be enough to protect their interest. The law laid down in **J. W. Arangadan v. Hashmi and another [2022 (1) KHC 122]** was relied on by the Family Court in that regard.

13. The learned counsel appearing for the petitioners would submit that the Family Court went wrong in taking such a view. The status of the parties was not taken into account while fixing Rs.7,50,000/- as the amount required to meet the expenses for the marriages of the petitioners. The learned counsel would submit that both petitioners are pursuing higher studies, which involves huge expenditure. But the respondent has not been meeting the said expenses. That aspect was not taken into account by the Family Court and for that reason also, in the view of the learned counsel, the order in I.A.No.11 of 2022 is wrong. The learned counsel further would contend that the respondent falsely claims that he requires to raise funds for his treatment by selling the petition schedule property. I.A. No. 1 of 2023 is filed by the petitioners producing therewith, Ext.P8, a copy of the settlement deed dated 21.01.2023 executed by the respondent in favour of his sister assigning her a property worth Rs.7,50,000/-. It is contended that if he really needs money, he could have sold that property instead of gifting it to his sister.

14. To appreciate the rival contentions of the parties, it is necessary to extract the material pleadings of the petitioners and also the respondent. Paragraph No.5 in Ext.P1, the petition in O.P.No.87 of 2022 reads as follows:-

“5. The petitioners are aged 26 years and 21 years. Both of them attained the age of marriage as per custom prevailing in their caste and religion. Good proposals are coming to them. Since the respondent neglected the petitioner and their mother from 18.02.2019 onwards, the petitioners are convinced that the respondent would not meet any expenses for their marriage. Considering the status and income of the respondent, the petitioners need at least 50 sovereigns of gold ornaments. For that, the petitioner needs an amount of Rs.18,96,300/- (Eighteen Lakhs Ninety-Six Thousand and Three Hundred) each towards the present market value of Gold Ornaments including the minimum making charges at the rate of 5%. The petitioners need Rs.50,000/- each, towards Dresses for the marriage and related functions. At least 500 persons are to be invited from the friends and relatives of the petitioner and for that an amount of Rs.1,00,000/- each is needed for the feast to the invites. Apart from that, for booking Marriage Auditorium, the petitioners need an amount of Rs.50,000/- each. The petitioners also need an amount of Rs.2,00,000/- each towards decorations, invitation cards, conveyance, and other sundry expenses. Thus each petitioner needs an amount of Rs.22,96,300/- for their marriage.”

15. The reliefs claimed in O.P.No.87 of 2022 read,-

“(A) Ordering the respondent to pay Rs.45,92,600/- towards the marriage expenses of the petitioners;
(B) Ordering the costs of the petition;
(C) Creating a charge over the petition schedule property for the prayer A&B;
(D) Granting all further reliefs which the petitioner may pray for from time to time and this Honourable Court may deem fit and proper to grant in the circumstances of the case.”

16. The material pleadings of the respondent in answer thereof and pertaining the matter in issue contained in paragraph No.6 of his counter statement in O.P.No.87 of 2022, Ext.P2, reads as follows:-

“6. xx xx While the respondent is residing in the house at the petition scheduled property respondent felt severe pain on the chest on 30/11/2020 and the respondent was admitted on the same day in Lakshmi Nursing Home at Palakkad and he was treated there till 08/12/2020. At this time on intimating respondent's admission in the hospital to his wife as well as to the petitioners they didn't care to come and see the respondent. The respondent's sister Beena came and gave respondent the necessary help. After the discharge from the hospital the respondent was taken to his

paternal home at Manarcad, Kottayam and now the respondent is residing there with the help of his sister the above said Beena. In between one year she got married and now she is residing with her husband. The respondent is surviving his life with the care and kindness of his neighbors as well as from the married sister. The above fact was also suppressed by the petitioner. From 18.02.2019 onwards respondent didn't get any help and care from his daughters who are none other than the petitioners herein, as well as from his wife named Mercikutty, the petitioners' mother. The respondent and his daughters; the petitioners herein as well as his wife the petitioners' mother herein are the followers of the Christian Pentecost. As per the customary rites the members belonging to the community doesn't have the habit of using any ornaments including gold, silver or any type of metal ornaments even chords. According to Christian Pentecost community rites the followers have no habit of wearing any kind of ornaments even chords. The followers of this community are considered to be banned from enjoying worldly desires. And in turn the demand and claim of the petitioners are 50 sovereigns of gold ornaments or the like sum of the respective value from the respondent is a fabricated story concocted or invented for the purpose of this case. The above version of the petitioners is false, concocted one and it is only

made to harass the respondent for creating a burden and charge on the petition scheduled property. The general principles and rites of the said community are also suppressed by the petitioners for the purpose of this case. There is no need of such imaginary expenses amount for the petitioners' marriage including the booking of the Auditorium, invitation card, decorations of the so-called auditorium etc., and thereby the petitioners have no right to claim Rs.22,96,300/- each from the respondent.” (underline added)

17. The claim in O.P.No.87 of 2022 is realisation of Rs.45,92,600/- towards marriage expenses. No relief concerning educational expenses is included. The petitioners have no claim over the petition schedule property, except a plea for the creation of a charge for the amount claimed towards their marriage expenses. Of course, if the petitioners are entitled to get a charge in the property, there is a reason for claiming an injunction against alienation and commission of acts of waste.

18. A charge on an immovable property can be created by acts of parties or by operation of law as provided in Section 100 of the Transfer of Property Act, 1882. Admittedly, there is

no contract between the petitioners and the respondent for the creation of a charge. Therefore, there must be a provision of law that enables the petitioners to claim charge on the petition schedule property, if to succeed in their claim for creation of charge. A court can only recognize and declare a charge which pre-exists. A court cannot create a charge anew.

19. The question then is whether there is a provision entitling a Christian daughter to realize marriage expenses from the immovable property of her father or the profits therefrom. Insofar as a Hindu daughter is concerned there is an enabling statutory provision. The definition of maintenance contained in Section 3(b) of the Hindu Adoptions and Maintenance Act, 1956 takes in its ambit reasonable expenses of and incidental to the marriage of an unmarried daughter.

20. Section 3(b) reads-,

“(b) "maintenance" includes—

- (i) in all cases, provision for food, clothing, residence, education and medical attendance and treatment;
- (ii) in the case of an unmarried daughter, also the reasonable expenses of and incident to her marriage.”

21. Section 20 of the Hindu Adoptions and Maintenance Act creates the right of an unmarried daughter, to claim maintenance. Section 20 reads-,

“20. Maintenance of children and aged parents.- (1) Subject to the provisions of this Section a Hindu is bound, during his or her life-time, to maintain his or her legitimate or illegitimate children and his or her aged or infirm parents.

(2) A legitimate or illegitimate child may claim maintenance from his or her father or mother so long as the child is a minor.

(3) The obligation of a person to maintain his or her aged or infirm parent or a daughter who is unmarried extends in so far as the parent or the unmarried daughter, as the case may be, is unable to maintain himself or herself out of his or her own earnings or other property.

Explanation.—In this section "parent" includes a childless step-mother.”

22. From the aforesaid provisions, it is explicitly clear that an unmarried Hindu daughter has a statutory right to get the reasonable expenses of and incident to her marriage from her father. Those provisions apply only to a Hindu. This Court in **Ismayil v. Fathima and another [2011 (3) KHC 825]**,

considered the question whether a Muslim father has an obligation to pay expenses in relation to the marriage of his daughter. The Division Bench considered that question in its generic perspective and held that not only a Muslim father every father irrespective of religion has such an obligation.

Paragraph No.28 of the judgment reads as follows:

"28. The above discussions lead us to the conclusion that the right/obligation to maintain the unmarried daughter includes the right/obligation to meet the marriage expenses of the unmarried daughters. This is so for all fathers be they Hindus, Muslims, Christians or others. We adopt the following process of reasoning to reach that conclusion. They all have the duty under their personal law to maintain their children. Even ignoring the personal law, as declared in **Mathew Varghese v. Rosamma Varghese [2003 (3) KLT 6]**, such a right/duty can be spelt out from Article 21 of the Constitution. Duty to maintain is not limited to provide for food, raiment and lodging. It includes the duty of the obligee to do all acts for the physical, mental and moral well-being of the child. That duty has to be understood in the context of the Indian society in the modern constitutional republic. The concept has to be understood identically for persons belonging to all religious faiths in the secular polity.

Where the interpreter has elbow room, he must invoke the power of interpretation as a functionary of the State consistent with the mandate of Article 44 of the Constitution. The interpreter need not wait for the Parliament to enact a uniform civil code. Till that is done by the Parliament, the interpreter as a functionary of the State must draw inspiration from Art.44 of the Constitution in performing the duty/power of interpretation. So reckoned the duty to maintain the unmarried daughters under the personal law must in the present-day Indian context include the obligation to meet the marriage expenses of the unmarried daughters. For all members of the Indian polity, this has to apply. The Muslim father also, we hence hold, has the obligation to pay/meet the marriage expenses of his unmarried daughter. We must hasten to observe that the right/duty is only to meet the reasonable expenses, that too only when the daughter is dependent on the father;”

23. We unhesitatingly agree with that view. The right of an unmarried daughter to get reasonable expenses concerning her marriage from her father cannot have a religious shade. It is a right of every unmarried daughter irrespective of her religion. There cannot be a discriminatory exclusion from claiming such a right based on one’s religion.

We accordingly hold that the respondent has the obligation to meet the reasonable expenses in connection to the marriage of the petitioners who are his daughters.

24. Section 39 of the Transfer of Property Act reads-,

"39. Transfer where third person is entitled to maintenance.— Where a third person has a right to receive maintenance, or a provision for advancement or marriage, from the profits of immovable property, and such property is transferred, the right may be enforced against the transferee, if he has notice or if the transfer is gratuitous; but not against a transferee for consideration and without notice of the right, nor against such property in his hands."

25. Under Section 39 of the Transfer of Property Act, any person having a right to receive maintenance, or a provision for advancement or marriage, from the profits of immovable property, that claim can be enforced against the immovable property of the person obliged. The right of an unmarried daughter to get marriage expenses from his father is now a legal right. By taking an analogy from the Hindu Adoptions and Maintenance Act that right, irrespective of religion can be enforced against the profits from the immovable property of the

father. When the petitioners are thus entitled to claim a charge on the immovable property of the respondent who is their father the relief of creation of a charge on the petition schedule property, which belongs to the respondent, is tenable. In that view of the matter, an application for a temporary injunction against alienation is legally sustainable. However, when the petitioners already have filed a petition for attachment of the same property of the respondent, there is no justification for the petitioner to claim the equitable relief of injunction prohibiting the respondent from alienating the property or committing acts of waste. Applying for injunction and simultaneously an application for attachment of the property shows the intention of the petitioners. Their intention is not merely to secure their right to realise the money becomes due under the decree that may be passed in O.P. No. 87 of 2022, but to cause embarrassment and inconvenience to their father. We are, therefore, of the view that the Family Court rightly had dismissed I.A.No.2 of 2022 and allowed I.A.No.9 of 2022 as its obvious consequence. We do not find any reason to interfere with the said order.

26. Although the learned counsel appearing for the petitioners would submit that the claim includes expenses in connection with the education of the petitioners also, the pleadings of the petitioners and the relief they seek which are extracted above, show that the claim is marriage expenses alone. The contention of the respondent that the parties follow Pentecostal belief and the women of their denomination do not wear metal ornaments is not denied by the petitioners. If so, the claim of the petitioners that Rs.18,96,300/- is required for the purchase of 50 sovereigns of gold ornaments for each of the petitioners in connection with their marriage is prima facie baseless. As rightly pointed out by the Family Court what is entitled by the petitioners is the amount to meet reasonable expenses in connection with the marriages. The Family Court computed the expenses on a prima facie estimation as Rs.7,50,000/-. We are of the view that a detailed enquiry into that aspect is unwarranted at this stage. From the materials on record and in the light of the fact that the petitioners do not require any gold ornaments at the time of marriage, the

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amount to meet reasonable expenses in connection with the marriages of the petitioners would not exceed Rs.15 lakhs. Hence, we are of the view that an attachment to secure an amount of Rs.15 lakhs would certainly protect the interest of the petitioners. We, however, make it clear that the observations we made hereinbefore are for the purpose of disposal of these interlocutory matters alone and final disposal of O.P.No.87 of 2022 shall be uninfluenced by any of the said observations.

Accordingly,-

- i) O.P.No.704 of 2022 is disposed of by modifying the order in I.A.No.11 of 2022 in O.P.No.87 of 2022 to the extent that there shall be an attachment of the petition schedule property for securing an amount of Rs.15 lakhs. If the respondent furnishes security for Rs.15 lakhs by way of fixed deposit or other similar modes, the Family Court will withdraw the attachment over the property; and

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ii) O.P.No.721 of 2022 is dismissed.

Sd/-
ANIL K. NARENDRAN, JUDGE

Sd/-
P.G. AJITHKUMAR, JUDGE

dkr

APPENDIX OF OP (FC) 704/2022

PETITIONER EXHIBITS

- EXHIBIT-P1 A TRUE COPY OF THE PETITION IN O.P NO.87/2022 OF THE FAMILY COURT, PALAKKAD DATED 29.01.2022.
- EXHIBIT-P2 A TRUE COPY OF THE COUNTER STATEMENT FILED BY THE RESPONDENT IN O.P NO.87/2022 OF THE FAMILY COURT, PALAKKAD DATED 16.12.2022.
- EXHIBIT-P3 A TRUE COPY OF THE I.A NO.11/2022 IN O.P NO.87/2022 OF THE FAMILY COURT, PALAKKAD DATED 20.07.2022.
- EXHIBIT-P4 A TRUE COPY OF THE COUNTER STATEMENT FILED BY RESPONDENT IN I.A NO.11/2022 IN O.P NO.87/2022 OF THE FAMILY COURT, PALAKKAD DATED 01.08.2022.
- EXHIBIT-P5 A TRUE COPY OF THE ORDER DATED 23.11.2022 IN I.A NO.11/2022 IN O.P NO.87/2022 OF THE FAMILY COURT, PALAKKAD.

RESPONDENT EXHIBITS

- EXHIBIT R1 TRUE COPY OF THE COMMON ORDER DATED 23/11/22 ON I.A.NOS.2/22 AND 9/22 IN O.P.NO.87/22 ON THE FILES OF THE FAMILY COURT, PALAKKAD
- EXHIBIT R2 TRUE COPY OF THE ORDER DATED 23/11/22 ON I.A.NO.10 OF 2022 IN O.P.NO.87/22 ON THE FILES OF THE FAMILY COURT, PALAKKAD

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APPENDIX OF OP (FC) 721/2022

PETITIONER EXHIBITS

- EXHIBIT-P1 A TRUE COPY OF THE PETITION DATED 29.01.2022 IN O.P NO.87/2022 OF THE FAMILY COURT, PALAKKAD.
- EXHIBIT-P2 A TRUE COPY OF THE COUNTER STATEMENT FILED BY THE RESPONDENT IN O.P NO.87/2022 OF THE FAMILY COURT, PALAKKAD DATED 16.12.2022.
- EXHIBIT-P3 A TRUE COPY OF THE I.A NO.2/2022 IN O.P NO.87/2022 OF THE FAMILY COURT, PALAKKAD DATED 29.01.2022.
- EXHIBIT-P4 A TRUE COPY OF THE ORDER DATED 02.03.2022 IN I.A NO.2/2022 IN O.P NO.87/2022 OF THE FAMILY COURT, PALAKKAD.
- EXHIBIT-P5 A TRUE COPY OF THE I.A NO.9/2022 IN O.P NO.87/2022 OF THE FAMILY COURT, PALAKKAD DATED 27.04.2022.
- EXHIBIT-P6 A TRUE COPY OF THE COUNTER STATEMENT FILED BY THE RESPONDENT IN I.A NO.9/2022 IN O.P NO.87/2022 OF THE FAMILY COURT, PALAKKAD DATED 31.05.2022.
- EXHIBIT-P7 A TRUE COPY OF THE COMMON ORDER DATED 23.11.2022 I.A NOS.2/2022 & 9/2022 IN O.P NO.87/2022 OF THE FAMILY COURT, PALAKKAD.
- EXHIBIT-P8 A TRUE COPY OF THE REGISTERED SETTLEMENT DEED NO.132/2023 OF THE SRO, KOTTAYAM EXECUTED BY THE RESPONDENT DATED 21.01.2023.

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RESPONDENT EXHIBITS

EXT.R1 (A)

**A TRUE COPY OF THE DISCHARGE SUMMARY
FROM MAR SLEEVA MEDICITY, PALAI**