

IN THE COURT OF SESSION, THALASSERY

Present: Sri. K.T. Nisar Ahammed, Sessions Judge.

Wednesday, the 26th day of June, 2024/ 05th Ashadha, 1946.

Crl.M.P.No. 3778/2024 in Crl.A.No.127/2024

(MC.02/2021 of Grama Nyayalaya, Iritty, Payam)

Petitioner/Appellant:-

Thushara Thomas., W/o. Thomas.V.P, aged 44 years,
residing at Vallikkavungal House, Karikotakari,
Koomanthodu.P.O, Iritty Taluk, Kannur District.

Respondents/Respondents:-

1. Mariyam Philip., W/o. Late. Philip, aged 68 years,
residing at Vallikkavungal House, Karikotakari,
Koomanthodu.P.O, Iritty Taluk, Kannur District.
2. Thomas.V.P., W/o. Late. Philip, aged 46 years,
residing at Vallikkavungal House, Karikotakari,
Koomanthodu.P.O, Iritty Taluk, Kannur District.

Petition to stay the execution of the order passed by the Grama Nyayalaya, Iritty, Payam in MC.02/2021 till the disposal of the appeal.

This petition coming on this day for hearing before me in the presence of Sri. Jayaprakashan.R, Advocate for the petitioner, Sri. K.A. Philip, Advocate for the respondent No.1, and the Court passed the following:-

ORDER

Petition for stay of the impugned order passed by the Gram Nyayalaya, Iritty at Payam in MC. 02/21.

2. The petition averments in brief are as follows:

The 1st respondent herein had filed MC.02/21 against the petitioner and the 2nd respondent u/s.12 of the Protection of Women

from Domestic Violence Act to restrain them from entering to the house having building No.AP VII/962, from expelling her from the house and also for compensation. The petitioner herein appeared and filed counter statement and contended that the petition was filed by the 1st respondent in collusion with the 2nd respondent, husband of the petitioner herein in order to expel her from the house. It is the shared household of the petitioner herein and children. The 2nd respondent had filed OP.399/21 for divorce. The petitioner herein had also filed MC.3/21 under the provisions of the Domestic Violence Act for an order not to eject her from the shared household. The petitioner herein had adduced sufficient evidence before the court in support of her contention. But, the Grama Nyayalaya, Iritty happened to allow the petition. If the impugned order is executed, the petitioner herein and children will be thrown out to the street. She is not having any other dwelling place. She has got a good case in appeal and there is every chance of success. Hence, the petitioner prays for stay of the impugned order.

3. The 1st respondent appeared and filed counter statement and contended as follows:

Initially, the 1st respondent herein had filed a petition before the Sub Collector, Thalassery (Maintenance Tribunal) against the petitioner herein and her husband, the 2nd respondent herein and the Tribunal was pleased to pass an order in favour of the petitioner. The above said house belongs to the 1st respondent. The house was constructed by the husband of the 1st respondent. The 1st respondent is aged 72 years. The petitioner herein is a Teacher of Vocational Higher Secondary School and having sufficient income. The husband of the 1st respondent died in 2016 and it is the duty

of the son, the 2nd respondent herein to look after the 1st respondent. But, the 2nd respondent colluded with the petitioner in order to evict her from the house and also to misappropriate her property and wealth. In November 2021, the 1st respondent affected with COVID. At that time, under the guise of taking care of the 1st respondent, the petitioner and the 2nd respondent came home. Then, the petitioner assaulted the 1st respondent. Then, with the assistance of Police, they had forcibly evicted her from the house. Accordingly, she filed MC.02/21 before the Grama Nyayalaya. The trial court after considering the evidence adduced by both parties, pleased to allow the petition. There is no illegality or impropriety. The petitioner herein is a Teacher having sufficient income to find out a suitable accommodation. She is working about 40KM away from the house. The intention of the petitioner herein is only to evict the respondent from the house. If she is evicted from the house, she will be in trouble. The petition is liable to be dismissed.

4. Heard both sides.

5. The learned counsel for the petitioner has submitted that on going through the contentions of both parties, one can see that the 2nd respondent herein, the husband of the petitioner herein had already filed a Divorce OP and is pending. He colluded with the 1st respondent herein, his mother filed MC.02/21 in order to evict the petitioner and her children. The trial court happened to allow the petition MC.02/21. If the order is executed, the petitioner and children will be thrown out to the street. The respondents herein colluded and invoked the Provisions of the Maintenance and Welfare of Parents and Senior Citizens Act and also obtained order from the Maintenance Tribunal in order to evict the petitioner. The property

originally belongs to the 2nd respondent, husband of the petitioner. Only to defeat the right of the petitioner, the 2nd respondent transferred the property in the name of the 1st respondent/mother. The learned counsel has invited my attention to the ruling reported in 2020 (6) KHC 749 (SC) and submitted that “even in such circumstance, it is the shared household and the petitioner is entitled to get the protection under the D.V.Act.” If the impugned order is allowed to be executed, the petitioner and children will be thrown out to the street. Hence, the learned counsel prays for stay of the impugned order. The learned counsel for the 1st respondent has submitted that in fact, the petitioner and the 2nd respondent colluded each other to evict the 1st respondent from the house. The house absolutely belongs to the 1st respondent. It was constructed by her husband. Her husband is no more and she has no other place of abode . The petitioner is a Vocational Higher Secondary Teacher and having sufficient income to find out an alternate accommodation. She is working in a School about 40 KM away from the house. So, the learned counsel submitted that the petition is liable to be dismissed.

6. On hearing both sides, I am of the opinion that there is some merit in the submission of the learned counsel for the petitioner. Admittedly, the 2nd respondent has filed a divorce OP against the petitioner. The property originally belongs to the 2nd respondent and later transferred to the 1st respondent/mother. In the ruling **2020 (6) KHC 749 (SC) Vanitha S. v. Deputy Commissioner, Bengaluru Urban District and Others**, the apex court has held that,

“A shared household would have to be interpreted to include the residence where the appellant had

been jointly residing with her husband. Merely because the ownership of the property has been subsequently transferred to her in-laws (Second and Third Respondents) or that her estranged spouse (Fourth Respondent) is now residing separately, is no ground to deprive the appellant of the protection that was envisaged under the PWDV Act, 2005."

7. So, going by the above ruling of the Hon'ble Supreme Court, even if the property is transferred in the name of mother, it is still a shared household. Here, the petitioner is the wife of the 2nd respondent. The petitioner and children have got a right to reside in the house. So, I am inclined to allow this petition.

Accordingly, the impugned order to the extent it applies to the petitioner herein is hereby stayed till the disposal of the Appeal. It is made clear that, the impugned order against the 2nd respondent herein, ie the son of the 1st respondent is not stayed.

(Dictated to the Confidential Assistant transcribed and typed by her, corrected and pronounced by me in open Court, this the 26th day of June, 2024).

Sd/-
SESSIONS JUDGE

Copy to:-

1. The Grama Nyayalaya, Iritty, Payam.
2. The Petitioner.

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