

IN THE COURT OF THE JUDICIAL FIRST CLASS MAGISTRATE,  
MATTANNUR

Present:- Smt.Shahina.N.V,  
Judicial First Class Magistrate

Dated this the 25<sup>th</sup> day of April 2026 / 05<sup>th</sup> day of Vaishaka 1947

**MC.No.47/2020**

Ann Cerin Jose, D/o.Joseph, aged 36/20, Kirshna Nilayam, Thillankeri, P.O.Mambaram. Within the limits of the Muzhakunnu Police Station. (Represented by Adv.K.Bindu)	:	Petitioner
1. Saviyo Joseph, Aged 40/20, S/o.Joseph Ulikkunnel, Ulikkunnel House, Mandapparamba, P.O.Ulikkal.	:	Respondents
2. Joseph Ulikkunnel, Ulikkunnel House, Mandapparamba, P.O.Ulikkal. Within the limits of Ulikkal Police station. (Represented by Adv.T.A.Justine)	:	

**ORDER**

1. This is an application filed under Section 12 of the Protection of Women from Domestic Violence Act, 2005.

2. The case of the petitioner, in brief, is as follows: The marriage between the petitioner and the respondent No.1 was solemnized on 02.07.2012 in accordance with their religious customs. Respondent No.2 is the father of

respondent No.1. After the marriage, the petitioner and respondent No.1 resided together as husband and wife in the tharavad house of the respondents. It is alleged that, due to acts of cruelty committed by the respondents, the petitioner and respondent No.1 were compelled to reside separately in a rented house. Subsequently, they shifted to a newly constructed house with effect from 28.12.2014. According to the petitioner, the construction of the said house and the entire financial assistance were provided by her and her relatives. However, the property was registered jointly in the name of the petitioner and respondent No.1, owing to the trust reposed by her in respondent No.1.

3. It is further stated that, on account of continued cruelty, the petitioner filed a divorce petition before the Family Court, Thalassery, as O.P. No.93/2018, which was decreed in her favour. Thereafter, the petitioner remarried one Bijith and is presently residing with him. It is also contended that the petitioner obtained a favourable judgment in O.P. No.856/2017 from the Family Court, Thalassery, declaring her as the exclusive owner of the property, which originally stood in the joint names of the petitioner and respondent No.1. It is further alleged that, despite the said judgment, the respondents continue to reside in the said residence and are threatening the petitioner and her relatives to vacate the premises. The petitioner further contends that she has no alternative

residence of her own, and that the house in which she is presently residing is not in her name. It is also alleged that the respondents have neither legal nor moral right to continue in occupation of the said property.

4. The petitioner further alleges that she has suffered financial, mental, physical, and emotional distress due to the conduct of the respondents. It is also stated that respondent No.1 neglected to maintain the petitioner during the subsistence of their marital relationship. The petitioner claims that respondent No.1 is employed as a Manager at ESAF and earns approximately ₹1,00,000/- per month, and that respondent No.2 earns about ₹2,00,000/- per month, including income from real estate business. Hence, the petitioner seeks: (i) an order directing the eviction of the respondents from the residential building bearing No.544-C in Ward No.XII of Ulikkal Grama Panchayat, Olikkunnel House, Mandapparamba P.O., Ulikkal; (ii) a permanent prohibitory order restraining the respondents from entering into the said residence; and (iii) an order directing the respondents to pay compensation of ₹25,00,000/- for the losses and sufferings caused to the petitioner.

5. The respondents entered appearance and filed a joint counter statement in the petition under Section 23 (C.M.P. No.1144/2020) filed by the petitioner along with the main application. Thereafter, the counsel for the

respondents filed a memo stating that the counter statement filed in the said C.M.P. may be treated as the counter statement in the main M.C. The averments in the said counter statement, in brief, are as follows:

6. The petition is legally and factually untenable. The marriage between the petitioner and respondent No. 1 has already been dissolved by the order of the Hon'ble Family Court, Thalassery. The residential building bearing No.544-C in Ward No.XII of Ulikkal Grama Panchayat, where the petitioner and respondent No.1 had resided, is jointly owned by the petitioner and respondent No.1. It is further contended that though O.P. No.856/2017 filed by the petitioner seeking declaration of exclusive ownership over the said property was allowed in her favour, respondent No.1 has preferred an appeal before the High Court of Kerala as Mat. Appeal No.638/2020, which is still pending consideration, and mediation proceedings therein are in progress.

7. The respondents contend that, in view of the joint ownership of the property, respondent No.1 is entitled to rights over the same, and the claim of the petitioner that the property exclusively belongs to her is subject to the outcome of the aforesaid appeal. The allegation that the petitioner suffered mental, physical, and emotional distress due to the conduct of the respondents is denied as false and put forth solely for the purpose of this case. It is further

contended that the petitioner has already obtained a decree of divorce against respondent No.1 and has subsequently remarried, and is presently residing separately. According to the respondents, if the petitioner intends to enforce the judgment in O.P. No.856/2017, she ought to initiate appropriate execution proceedings before the competent Family Court. Filing of the present petition, without resorting to such legal remedies, is not maintainable. It is also contended that, in view of the pendency of Mat. Appeal No.638/2020 before the High Court of Kerala, the relief sought for eviction of the respondents from the residence is premature and liable to be rejected. Hence, the respondents prayed for dismissal of the petition.

8. From the part of the petitioner, she was examined as PW1 and Exhibits P1 to P19 were marked. From the side of the respondents, the respondent No.1 was examined as DW1. No documentary evidence was adduced on the side of the respondents.

9. Heard both sides and perused the records.

10. The following points arise for consideration:

1. *Whether the petitioner is subjected to domestic violence by the respondent?*

2. *Whether the petitioner is entitled to an order directing the eviction of the respondents from the residence claimed to be owned by her, bearing No.544-C in Ward No.XII of Ulikkal Grama Panchayat, Olikkunnel House, Mandapparamba P.O., Ulikkal?*
3. *Whether the petitioner is entitled to a permanent prohibitory order restraining the respondents from entering into the aforesaid residence?*
4. *Whether the petitioner is entitled to compensation of ₹25,00,000/- from the respondents?*
5. *Whether the petitioner is entitled to a protection order, if any?*

6. **Point No.1:** It is not in dispute that the marriage between the petitioner and respondent No.1 was solemnized on 02.07.2012 and that the same was subsequently dissolved by a decree of divorce granted by the Family Court, Thalassery in the year 2018. Thus, the existence of a domestic relationship between the parties is established. The evidence further shows that the petitioner has been residing separately since 2017 and that she remarried in the year 2020.

7. According to PW1, she was compelled to reside separately due to the cruelty meted out to her by the respondents and that she was driven out of the shared household. She further deposed that she obtained a decree of divorce on the ground of cruelty. Exhibit P13, the certified copy of the judgment in O.P. No.93/2018 of the Family Court, Thalassery, corroborates her version and clearly indicates that the marriage was dissolved on the ground of cruelty. Further, during cross-examination, DW1 admitted that the marriage between himself and the petitioner was dissolved by the Family Court, Thalassery, on a petition filed by the petitioner alleging cruelty on his part. It is also pertinent to note that no appeal has been preferred against the said judgment.

8. Though PW1 was subjected to cross-examination, nothing material was elicited to discredit her version regarding domestic violence. The oral testimony of PW1, coupled with Exhibit P13 and the admission of DW1, clearly establishes that the petitioner was subjected to domestic violence during the subsistence of the marital relationship. Accordingly, this Court finds that the petitioner has succeeded in proving that she was subjected to domestic violence by respondent No.1. Hence, Point No.1 is answered in favour of the petitioner.

11. **Point No.2 to 5:-** Since Point No.1 has been found in favour of the petitioner, it is held that the petitioner is an “aggrieved person” within the

meaning of Section 2(a) of the Protection of Women from Domestic Violence Act, 2005. Consequently, this Court is required to consider whether the petitioner is entitled to the reliefs sought in the petition.

12. Though the petitioner has sought, in the petition, an order directing eviction of the respondents from the aforesaid residence, a permanent prohibitory order restraining the respondents from entering into the said residence, and compensation, it is pertinent to note that, in the proof affidavit, she has confined her claim only to a protection order and an eviction order. However, considering that the Protection of Women from Domestic Violence Act, 2005, is a beneficial piece of legislation, this Court deems it appropriate to consider all the reliefs originally sought in the petition as well as those referred to in the proof affidavit.

13. At the same time, it is well settled that the grant of reliefs under the Protection of Women from Domestic Violence Act, 2005, is discretionary in nature, and the Court is required to exercise such discretion judiciously, having due regard to the facts and circumstances of each case and the evidence on record.

14. The principal relief sought by the petitioner is a residence order,

more particularly, an order directing the eviction of the respondents from the petition schedule property. It is evident from Exhibit P7 sale deed that the said property was originally held jointly in the names of the petitioner and respondent No.1. According to PW1, subsequently, by virtue of the judgment in O.P. No.856/2017 of the Hon'ble Family Court, Thalassery, the property was declared to be the exclusive property of the petitioner. The petitioner contends that there is no order of stay operating against the said judgment, and it is also not the case of the respondents that any stay has been granted. Nonetheless, the evidence of both PW1 and DW1 clearly indicates that the issue relating to title over the property is presently pending before the Hon'ble High Court as Mat. Appeal No.638/2020.

15. It is true that, under the Protection of Women from Domestic Violence Act, 2005, particularly in relation to a residence order, what is required to be established is the existence of a "shared household" and not necessarily ownership. However, in the present case, the petitioner herself has set up a claim of exclusive ownership on the strength of the Family Court judgment, which is under challenge and yet to attain finality.

16. Further, it is admitted that the petitioner has been residing separately since 2017 and has remarried thereafter and is presently residing with

her husband. According to the respondents, they have been residing in the petition schedule property for a considerable period of 10 years. It has also come out in evidence that, at present, the petitioner is not residing in the petition scheduled property.

17. In **D. Sudheer V Anusha.R. Nair: 2025 Supreme(Online)(KER) 164**, the Hon'ble High Court of Kerala held that “ *Maintenance under the DV Act is entitled from the date of application, while residence orders do not apply post-divorce*”.

18. Similarly, in **Ramachandra Warrior v. Jayasree and Another: 2021 (2) KHC 504**, the Hon'ble High Court of Kerala held, “ *a divorced wife will not be entitled to right of residence conferred under S.17 for reason of that right being available only to a woman in a domestic relationship*”.

19. In view of the above discussion and considering the facts and circumstances of the case, this Court is of the view that the petitioner is not entitled to an order of eviction of the respondents or to a prohibitory order restraining them from entering into the said house, nor to a protection order as prayed for. However, the petitioner is entitled to a compensation order, which shall be reasonable and fair, having regard to the facts and circumstances of the

case.

20. The evidence on record shows that both the petitioner and respondent No.1 are employed, and respondent No.1 is working as a Manager in a bank. It has also come out in evidence that respondent No.2 has income from a real estate business. Significantly, respondent No.1 has not denied his employment or income during the course of evidence. Though the petitioner has claimed compensation of ₹25,00,000/-, the said amount appears excessive.

21. Considering the nature of domestic violence proved, the status, income, and financial capacity of the respondents, and the overall facts and circumstances of the case, this Court is of the view that it would be appropriate and reasonable to award compensation of ₹5,00,000/- against respondent No.1 and ₹1,00,000/- against respondent No.2. Accordingly, Points No.2, 3, and 5 are found against the petitioner. Point No.4 is found partly in favour of the petitioner.

***In the result, the petition is partly allowed as follows:***

- 1. Respondent No.1 is directed to pay ₹5,00,000/- (Rupees Five Lakhs only) and Respondent No.2 is directed to pay ₹1,00,000/- (Rupees One Lakh only) to the petitioner as compensation.***

***2. All other reliefs sought by the petitioner are hereby declined.***

(Dictated to the Confidential Assistant, transcribed and typed by him, corrected and pronounced by me in open court, this the 25<sup>th</sup> day of April 2026).

Sd/-  
Judicial First Class Magistrate,  
Mattannur

**APPENDIX**

**WITNESSES EXAMINED FOR PETITIONER:**

<i>Rank</i>	<i>Name</i>	<i>Whether Eyewitness, Police witness, Expert witness, Medical witness, Other witness</i>
PW1	Ann Cerin	Complainant

**EXHIBITS MARKED FOR PETITIONER:**

<i>Sl.No.</i>	<i>Exhibit Number</i>	<i>Description</i>
1.	Exhibit P1 / PW1	Certified copy of SB account of petitioner's father
2.	Exhibit P2 / PW1	Certified copy of SB account of petitioners father
3.	Exhibit P3 / PW1	Passbook of petitioners father (certified copy)
4.	Exhibit P4 / PW1	Certified copy of SB account of petitioner
5.	Exhibit P5 / PW1	Certified copy of SB account of petitioner
6.	Exhibit P6 / PW1	Certified copy of SB account of petitioner

7.	Exhibit P7 / PW1	Certified copy of property details (sale deed)
8.	Exhibit P8 / PW1	Certified copy of tax receipt
9.	Exhibit P9 / PW1	Certified of Building tax receipt
10.	Exhibit P10 / PW1	Certified coy of tax receipt
11.	Exhibit P11 / PW1	Certified coy of property tax receipt
12.	Exhibit P12 / PW1	Certified copy of tax receipt
13.	Exhibit P13 / PW1	Certified copy of judgment of Family court
14.	Exhibit P14 / PW1	Certified copy of the order in IA.8/20 of Family Court
15.	Exhibit P15 / PW1	Possession certificate
16.	Exhibit P16 / PW1	Ownership certified
17.	Exhibit P17 / PW1	Land tax receipt
18.	Exhibit P18 / PW1	Building tax receipt
P19.	Exhibit P19 / PW1	“Kudikkada certificate” (Encumbrance certificate)

**WITNESSES EXAMINED FOR RESPONDENT:**

<i>Rank</i>	<i>Name</i>	<i>Whether Eyewitness, Police witness, Expert witness, Medical witness, Other witness</i>
RW1	Saviyo Joseph	Respondent No.1

EXHIBITS MARKED FOR RESPONDENT: Nil

MOS.MARKED: Nil

Sd/-  
Judicial First Class Magistrate,  
Mattannur

-/True copy/-

Judicial First Class Magistrate,  
Mattannur

/vt