IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE SATHISH NINAN

&

THE HONOURABLE MR.JUSTICE P. KRISHNA KUMAR

THURSDAY, THE 13TH DAY OF NOVEMBER 2025 / 22ND KARTHIKA, 1947

MAT.APPEAL NO. 450 OF 2018

AGAINST THE ORDER DATED 23.03.2018 IN OP NO.178 OF 2009 OF FAMILY COURT,KOLLAM

APPELLANT/PETITIONER:

RAHILA BEEVI, AGED 64 YEARS
W/O.MOHAMMED BASHEER,
RESIDING AT SHALIMAR,
RAJEEV NAGAR, PALLITHOTTAM P.O.,
KOLLAM WEST VILLAGE, KOLLAM-691006.

BY ADVS.
SRI.R.T.PRADEEP
SRI.SAIJO HASSAN

RESPONDENT/RESPONDENT:

A.MOHAMMED BASHEER,
AGED 67, S/O.ABDUL RAHIM,
KERAVANAM VEEDU, AMACHAL,
CHATHANNOOR P.O.,
KOLLAM DISTRICT-691572.

BY ADVS.
SMT.ANUROOPA JAYADEVAN
SHRI.B.SURESH KUMAR

THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD ON 05.11.2025, THE COURT ON 13.11.2025 DELIVERED THE FOLLOWING:

SATHISH NINAN & P.KRISHNA KUMAR, JJ

Mat.Appeal No.450 of 2018

Dated this the 13th day of November, 2025

JUDGMENT

P.Krishna Kumar.J

The appellant filed a petition before the Family Court, Kollam, seeking declaration of her right over 8 cents of land and the two-storied building standing thereon, and a consequential injunction restraining the respondent, her husband, from interfering with her possession. The Family Court, by the order impugned in this appeal, rejected her claim.

2. The parties shall hereinafter be referred to as they were arrayed in the original petition. The petitioner was married to the respondent on 09.06.1974. According to her, the respondent hailed from a very poor family, whereas she came from affluent circumstances. The respondent began his career as a bus conductor, subsequently joined the Police Department as a Sub-Inspector, and retired as a Deputy Superintendent of Police. The petitioner and the respondent had intended to purchase the scheduled property from the Kollam District Development Authority, and for that purpose, the petitioner arranged a sum of ₹1.53 lakh from her father and brothers. The total sale consideration of the property was ₹2,00,000/-, of which approximately ₹50,000/- was contributed by the respondent. As the petitioner was a *pardanashin* lady, she could not appear before the registration authority at the time of execution of the sale deed. Consequently, the property was purchased in the respondent's name alone, for namesake. The petitioner further contended that a two-storied building was subsequently constructed on the said land by utilising the sale proceeds of her gold ornaments. During the construction of the residence, all the necessary timber was supplied by her father. It is further contended that, notwithstanding the respondent's subsequent pronouncement of talaq, she has continued in possession of the property.

3. The respondent contended that the land was purchased and the building was constructed entirely from his own earnings, and also by availing a housing loan, bidding a chit from the KSFE, and taking a loan from his provident fund account. He further claimed that, during his service as Circle Inspector of Police, Paravur, he had purchased 1½ acres of rubber estate and 3 acres of landed property in the names of the petitioner and their children. He also asserted that he had purchased new gold ornaments for the petitioner after exchanging her old ones, and at that time, he had sold 62½ sovereigns of gold. It is further contended that those 62½ sovereigns were later stolen from the petitioner's custody while the respondent was working in Kosovo with the United Nations. The timber used for the construction of the house, he maintained, was procured by him from the Government Timber Depot at Pathanapuram as well as from a private individual residing at Kadakkal.

4. During the trial, the petitioner and the respondent were examined as PW1 and RW1, respectively. The evidence in the case comprises the oral testimonies of PW1 to PW3 and RW1 to RW6, and the documentary evidence marked as Ext.A1 series, Exts.B1 and B2, and Exts.X1 to X3. After considering the rival contentions, the trial court held that a petition seeking a declaration of right over an immovable property purchased in the name of the husband is not maintainable under Section 45 of the *Transfer of Property Act, 1882*.

5. We have heard Sri. R.T. Pradeep, the learned counsel appearing for the petitioner, and Sri. B. Suresh Kumar, the learned counsel appearing for the respondent.

6. The petitioner contends that the scheduled property was purchased using funds provided by her father and brothers on her behalf, for the advancement of her future. According to her, the land was intended to be purchased jointly in their names; however, the respondent fraudulently executed the sale deed solely in his own name, despite contributing only one-fourth of the sale consideration, and constructed the residential building thereon using the sale proceeds of her gold ornaments. She therefore claims to have a substantial right over the said property and building, which she seeks to assert through a declaratory decree. Thus, the question that arises for consideration is whether the petitioner has succeeded in establishing her claim.

7. The petitioner adduced evidence before the Court consistent with the averments in her pleadings. She also examined the respondent’s brother as PW2 in support of her contentions. PW3, the Deputy Superintendent of Police, Vigilance and Anti-Corruption Bureau, Kollam, produced Ext.X1 file pertaining to the enquiry conducted against the respondent. It has come out in evidence that, during the respondent’s tenure as Circle Inspector of Police, Paravur, a preliminary enquiry was ordered against him by the Director of Vigilance Investigation, Thiruvananthapuram, as per Ext.X1 series. The purpose of the enquiry was to ascertain whether the respondent had acquired assets disproportionate to his known sources of income. Pursuant to the said direction, the Deputy Superintendent of Police, Kollam, recorded the statement of the respondent, in which he made the following admissions:

> The respondent had been taking yield from 50 cents of coconut garden owned by the petitioner. The petitioner had received 75 sovereigns of gold ornaments and ₹25,000/- from her father. The respondent purchased the scheduled property, having an extent of 8.01 cents, for a sale consideration of ₹2,00,250/- from the Kollam Development Authority. He had received ₹53,000/- from the petitioner's brother, Abdul Vahab, through two NRI demand drafts, for the purchase of the property at Pallithottam (the property in question). He had also received ₹50,000/- from Abdul Salam, another brother of the petitioner. The respondent constructed a two-storied building on the said property during 1994–1995, incurring an expenditure of ₹4.25 lakhs. He had sold the petitioner's gold ornaments at Haris Jewellery, Paravur, for ₹1,60,192.50, to meet the expenses of the construction, and had produced receipts evidencing the said sale.

8. During cross-examination, RW1 conceded that he had made all the aforesaid statements to the officer who conducted the preliminary enquiry. Nevertheless, the respondent attempted to explain that he had given those statements only to extricate himself from the enquiry proceedings and that the statements recorded therein were not true.

9. A statement made by a party before any authority constitutes an admission within the meaning of Sections 17 & 18 of the Indian Evidence Act, 1872, corresponding to Sections 15 and 16 of the Bharatiya Sakshya Adhiniyam (BSA for short).

Under Section 21 of the Act (Section 19 of the BSA), such admissions are relevant and may be proved against the person making them. It is true that Section 31 of the Act (Section 25 of the BSA) provides that admissions are not conclusive proof of the matters admitted; nevertheless, it is well settled that they are relevant and substantive pieces of evidence (See ***Bharat Singh and another v. Mst. Bhagirathi***, AIR 1966 SC 405). While evidentiary admissions may be explained or shown to be incorrect by the person who made them, they do shift the burden of proof to that person. Unless so disproved or satisfactorily explained, such admissions constitute effective proof of the facts admitted (***Avadh Kishore Dass v. Ram Gopal and others***, AIR 1979 SC 861).

10. Applying the above principles while appreciating the evidence, let us examine whether the petitioner has succeeded in proving her claim. During cross-examination, RW1 further admitted that the petitioner's brother had remitted ₹50,000/- to him on 24.08.1993, and that another brother, Abdul Mohammad, had sent ₹53,000/- by way of two NRI drafts (One on 25.08.1993 and the other on 13.09.1993. The sale deed was executed on 25.10.1993). However, he contended that these amounts were received by him as loans, which he had subsequently repaid. The relevant portion of his statement is as follows:

> “2,60,000 രൂപയ്ക്കാണ് അന്യായ പട്ടിക വസ്തുവില വാങ്ങുന്നത്. 1993 ലാണ് വസ്തു വാങ്ങിയത്. അതിൽ 1 ½ ലക്ഷം രൂപ ഹർജി കക്ഷിയുടെ പിതാവും ഹർജി കക്ഷി യുടെ സഹോദരനും സഹോദരി ഭർത്താവും തന്നിട്ടുള്ളതാണെന്നും പറയുന്നു (Q). ശരിയല്ല എന്റെ PF loan എടുത്തും FD തുക പിൻവലിച്ചും എന്റെ savings ഉം ഉപയോഗിച്ചാണ് (A). ഹർജികക്ഷിയുടെ സഹോദരൻ 24 /8 /93 ഇൽ 50000 /- രൂപ ചാത്തന്നൂർ NRI Account വഴി നിങ്ങൾ അയച്ചു തന്നിട്ടില്ലേ (Q). വായ്പയായി അയച്ചു തന്നിട്ടുണ്ട്. ഞാൻ ടി തുക മടക്കി കൊടുത്തിട്ടുണ്ട്(A). Abdul Mohammad NRI draft വഴി രണ്ടു പ്രാവശ്യമായി 53000 /- രൂപ നിങ്ങൾക്ക് അയച്ചു തന്നിട്ടില്ലേ (Q). തന്നിട്ടുണ്ട് വായ്പയായി. മടക്കി കൊടുത്തിട്ടുണ്ട് (A). ഇതുകൂടാതെ 50000/- രൂപ ഭാര്യ പിതാവ് നിങ്ങൾക്ക് തന്നിട്ടില്ലേ (Q). കളവാണ് (A). വസ്തു വാങ്ങാൻ നിങ്ങളുടെ കൈയ്യിൽ നിന്ന് 50000/- രൂപ മാത്രമേ ചെലവാക്കിയിട്ടുള്ളൂ എന്ന് പറയുന്നു (Q). ശരിയല്ല. (A).”

Despite raising such a contention, the respondent failed to adduce any evidence to substantiate his claim. According to the sworn deposition of the petitioner, a sum of ₹1,53,000/- was provided to the respondent by her relatives for purchasing the property on her behalf as well. The respondent, on the other hand, had specifically admitted before the Vigilance Enquiry Officer that he had received ₹53,000/- from her brother for purchasing the land and that he had also received ₹50,000/- from another brother before the purchase. In his substantive evidence before the Court, he not only failed to disprove that admission but, in effect, affirmed its correctness by acknowledging that he had indeed received the said amounts. We, therefore, find that the petitioner's claim regarding her right over the scheduled property is highly probable.

11. As stated earlier, RW1 also conceded during cross-examination that he had stated in the Vigilance enquiry that an amount of ₹1,60,000/-, obtained from the sale of the petitioner's gold ornaments, was utilised for constructing the residential building. However, he attempted to explain that the said statement was falsely made in order to escape from the enquiry. We are unable to accept such a contention. It is, in the first place, for the respondent to establish that an admission of fact made by him on an earlier occasion was incorrect. Secondly, the explanation offered is wholly inadmissible in a judicial enquiry, as accepting it would virtually amount to the Court endorsing the respondent's own claim that he, while acting as a public servant, had acquired assets disproportionate to his bona fide income.

12. We are equally unconvinced by the oral testimony of RW5, the proprietor of the jewellery shop, who deposed that the respondent had purchased 50 sovereigns of new gold ornaments ten days after the sale of the old ornaments, pursuant to an order placed by him at the time of sale. During cross-examination, RW5 admitted that he had been questioned by the Vigilance Officer regarding the sale of the old gold ornaments by the respondent, but he had not stated to the officer that the respondent had purchased 50 sovereigns of gold thereafter. His evidence is lacking in credibility for yet another reason; he conceded that he had not issued any bill for the alleged purchase of the said new gold ornaments, though it was his regular practice to issue bills for both sales and purchases and that his shop had VAT registration at that time. In these circumstances, we find the petitioner’s contention that RW5 deposed falsely before the Court under the undue influence of the respondent, a former local police officer, to be probable.

13. Similarly, we find no relevance in the Ext.X2 series of crime records produced through RW2 to substantiate the respondent's contention that the gold ornaments allegedly purchased subsequently, were later stolen from the possession of the petitioner. Although the records show that the respondent had lodged a First Information Statement alleging that 61½ sovereigns of gold ornaments were stolen on 27.09.2000, we find no material to indicate that those ornaments were purchased using the sale proceeds of the petitioner's ornaments. First of all, there occurred a time gap of 6 years in between the two incidents. Further, even going by the respondent's own admission, he possessed several assets, including landed properties extending over a few acres, and had been proceeded against for acquiring disproportionate assets while acting as a public servant. In such circumstances, the materials relied upon by the respondent are wholly insufficient to establish that the sale proceeds of the petitioner's gold ornaments were not utilised for the construction of the residential building, contrary to his own earlier admission.

14. It is argued by Sri. B. Suresh Kumar, the learned counsel appearing for the respondent, that the original petition was filed before the Family Court after a lapse of 14 years from the date of the sale, and hence, it lacks bona fides. We are unable to accept this contention. So long as the marital relationship subsisted, the petitioner had no occasion or reason to challenge the sale arrangement. According to her, she was compelled to approach the Court only when the respondent attempted to bring another woman to reside in the said building after marrying her. It is also not disputed that the respondent had issued two *talaq* intimations to her on 01.01.2009 and 01.02.2009, respectively.

15. Therefore, the evidence of the petitioner appears more credible and probable than that of the respondent, even in respect of her claim regarding the joint ownership of the building. We have already accepted her version that, for the purchase of the property intended to be in their joint names, her father and brothers contributed ₹1,53,000/- towards the admitted sale consideration of ₹2,00,250/-. We also conclude that the sum of ₹1,60,000/-, utilised by the respondent for the construction of the residential building through the sale of the petitioner's gold ornaments, further establishes her right over both the land and the building, as a joint owner.

16. Though the title deed (Sale Deed No. 3499/1993 of Kollam SRO, produced before the Court as part of Ext.X1) shows the sale consideration as ₹1,00,000/- only, the respondent himself had stated before the Enquiry Officer, as per Ext.X1 series, that the actual sale consideration was ₹2,00,250/-. He had also claimed that the total expenditure incurred by him for the construction of the building was ₹4,25,000/-. Hence, if the total value of the property is taken as ₹6,25,250/- (₹2,00,250 + ₹4,25,000), the petitioner's contribution amounts to at least ₹3,13,000/- (₹1,53,000 + ₹1,60,000), which is equivalent to one-half of the total value. The trial court appears to have overlooked these crucial aspects. When it is established that the wife contributed one-half of the total consideration for the land and the building, deeming that she would be a joint owner, she is entitled to a declaration recognising her right. Since such a claim falls within the scope of Section 35 of the Specific Relief Act, the Family Court erred in holding that it was not maintainable on the ground that it did not come within the purview of Section 45 of the Transfer of Property Act.

17. Sri B. Suresh Kumar, the learned counsel appearing for the respondent, further contended that the recitals in the sale deed could not be contradicted by the petitioner in view of Section 92 of the Indian Evidence Act (corresponding to Section 95 of BSA). However, the rule excluding oral evidence under the said provisions applies only as between the parties to the instrument. That apart, in the present case, the property was purchased for the benefit of the family consisting of the husband and wife, and therefore, the transaction partakes the character of a trust. Consequently, irrespective of the recitals in the deed, the wife is entitled to seek a declaration of her right over the said property.

18. Therefore, we hold that the petitioner has a one-half share in the scheduled property and the building situated thereon, irrespective of what is stated in Sale Deed No. 3499/1993 of Kollam SRO. It is not in dispute that the

petitioner is residing in the building in the property. Her possession is liable to be protected by an injunction.

In the result, the appeal is allowed and the impugned order is set aside. It is declared that the petitioner has one-half share in the petition A schedule land and the two-storied building standing thereon. A consequential injunction is also granted restraining the respondent and persons claiming under him from forcefully interfering with the possession of the petitioner from the said land and building or from transferring or alienating her rights therein.

Sd/-

SATHISH NINAN, JUDGE

Sd/-

P.KRISHNA KUMAR, JUDGE

dlk/10.11