

Biji James Vs. Nil

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Court : Kerala

Decided On : Jan-21-2014

Judge : Honourable Mr.Justice V.Chitambaresh

Appellant : Biji James

Respondent : Nil

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN TUESDAY,THE21T DAY OF JANUARY20141ST MAGHA, 1935 Tr.P(C).No. 37 of 2014 () -----
AGAINST THE

ORDER

/

JUDGMENT

IN OPDIV7172013 of FAMILY COURT, KOTTARAKKARA
PETITIONER(S)/PETITIONERS/PETITIONERS:-:

----- 1. BIJI JAMES,
AGED42YEARS S/O.JAMES, KOLIYAKKODU VEEDU, ELAMPAL MURI
VILAKKUDY VILLAGE, PATHANAPURAM TALUK, KOLLAM.

2. JULIE THOMAS, AGED31YEARS D/O.K.V.THOMAS, KIZHAKKEDATHU
HOUSE, CHENGARoor P.O. KALLOOPPAARA VILLAGE, MALLAPPALLY

TALUK PATHANAMTHITTA DISTRICT. BY ADV. SRI.P.HARIDAS
RESPONDENT(S): ----- NIL THIS TRANSFER PETITION (CIVIL)
HAVING COME UP FOR ADMISSION ON 21.01.2014, THE COURT ON THE
SAME DAY PASSED THE FOLLOWING: Tr.P.(C).No. 37 of 2014 APPENDIX
PETITIONER'S ANNEXURE: ANNEXURE1 COPY OF THE OP (DIV)
NO.717/2013 DATED 09.02.2013 OF THE FAMILY COURT, KOTTARAKKARA.
RESPONDENTS ANNEXURE: NIL /TRUE COPY/ P.A.TO JUDGE VPV
P.N.RAVINDRAN, J.

----- Tr.P.(C)No.37 of 2014 ----- Dated
this the 21st day of January, 2014

ORDER

The prayer in this transfer petition jointly filed by the petitioners in O.P.(Div)No.717 of 2013 on the file of the Family Court, Kottarakkara is to transfer the said case either to Family Court, Kollam or to Family Court, Thiruvalla. It is stated that though more than six months have passed after O.P.(Div)No.717 of 2013 was filed in the Family Court, Kottarakkara for divorce by mutual consent under section 10A of the Indian Divorce Act, 1869 on account of the fact that the Family Court judge has retired from service, the petition for divorce has not been heard and disposed of. The petitioners have stated that they are employed in the middle east and that they have to return to their places of employment on 8.2.2014 and 25.1.2014 respectively. It is on these grounds that the petitioners seek a transfer of the case to Family Court, Kollam or to Family Court, Thiruvalla.

2. The copy of O.P.(Div)No.717 of 2013 produced along with the transfer petition discloses that it was presented on 9.7.2013. The averments therein disclose that it was presented a period of one year had elapsed. Though section 10A(1) stipulates that there Tr.P.(C)No.37 of 2014 2 should have been no cohabitation for a period of two years and the parties should have been living separately for the said period before a petition under section 10A(1) is filed, a Division Bench of this Court has in Saumya Ann Thomas v. Union of India [2010 (1) KLT869 declared the said provision as unconstitutional and to save the provision from being struck down, read down the period of two years stipulated in section 10A of the Divorce Act as a

period of one year. In the light of the said decision I am of the opinion that the application filed by the petitioners can be allowed and the case transferred to Family Court, Thiruvalla which is nearer to the residence of the wife.

3. I accordingly allow the transfer petition and transfer O.P. (Div)No.717 of 2013 presently pending before Family Court, Kottarakkara to Family Court, Thiruvalla for disposal. The parties shall appear before the Family Court, Thiruvalla and produce a certified copy of this judgment on 23.01.2014. Registry to issue certified copy of this judgment to the learned counsel for the petitioners if applied for today itself and to communicate a copy of this judgment to Family Court, Kottarakkara for compliance. Sd/- P.N.RAVINDRAN JUDGE vpv

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