

Suma Kamalamma Vs Anilkumar C

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Court : Kerala

Decided On : Jun-13-2023

Judge : Honourable Mr. Justice Anil K.Narendran,Honourable Mr.Justice P.G. Ajithkumar

Appeal No. : Tr.Appeal(C)/5/2023

Appellant : Suma Kamalamma

Respondent : Anilkumar C

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN & THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR TUESDAY, THE 13TH DAY OF JUNE 2023 / 23RD JYAISHTA, 1945 TR.APPEAL(C) NO. 5 OF 2023 AGAINST THE ORDER DATED 23.05.2023 IN TRANSFER PETITION

(C) NO.142 OF 2023 OF THE HIGH COURT OF KERALA APPELLANT/PETITIONER:

SUMA KAMALAMMA AGED 50 YEARS, D/O. NANU PILLAI SIVA PILLAI, WHITE PALACE APARTMENT, MAMPPALLY LNE, EROOR WEST P.O., THRIPIUNITHURA VILLAGE, ERNAKULAM TALUK, ERNAKULAM, PIN - 682306.

BY ADVS. R.LAKSHMI NARAYAN R.RANJANIE RESPONDENT/RESPONDENT: ANILKUMAR C., AGED 54 YEARS, S/O. C. RAJAGOPALAN, "PRABHA NIVAS", CHIYARAM P.O., THRISSUR DISTRICT, NOW RESIDING AT HIGHLIFE APARTMENT, OAK BUILDING P.O. KOORKANJERI, KOOTTATHU LANE, KOORKANHERI VILLAGE, THRISSUR TALUK, THRISSUR, PIN - 680007. BY ADV C.A.CHACKO THIS TRANSFER APPEAL(CIVIL) HAVING COME UP FOR ADMISSION ON 13.06.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

P.G. Ajithkumar, J.

The petitioner in Transfer Petition (C) No.142 of 2023 has filed this appeal under Section 5(i) of the Kerala High Court Act, 1958.

2. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondent.

3. The petitioner is the wife of the respondent. The

respondent filed O.P.No.2 of 2023 before the Family Court, Thrissur, seeking a decree of divorce. That petition was filed invoking the provisions of Section 13(1)(ia) and (ib) of the Hindu Marriage Act, 1955. The said petition was filed before the Family Court, Thrissur, stating that the respondent along with the appellant had last resided together at Koorkenchery in Thrissur Taluk. The appellant filed Tr.P.(C) No.142 of 2023 for an order transferring the said original petition to the Family Court, Ernakulam stating that she is now residing at Ernakulam and she proposes to file petition for getting back her gold ornaments from the respondent and also for maintenance before the Family Court, Ernakulam. She also

contended that she has been suffering from various diseases and not in a position to travel to Thrissur.

4. The learned Single Judge, after hearing both sides,

held that no valid reason was brought out, except the distance

between the two courts and accordingly dismissed the transfer petition.

5. The learned counsel appearing for the appellant

would submit that the appellant is living in penury; whereas the respondent, who is an Ex-serviceman, has sufficient income and in such circumstances compelling the appellant to travel to Thrissur for attending the Family Court there is unjust. The learned counsel for the appellant further would submit that the marriage between the appellant and the respondent was solemnised at Ernakulam and having the wife been residing at Ernakulam at the time of presentation of O.P.No.2 of 2023, the said case should have been transferred to the Family Court, Ernakulam.

6. The learned counsel appearing for the respondent,

on the other hand, would submit that the parties were residing together at Thrissur, and therefore the Family Court, Thrissur has jurisdiction to entertain the petition. In the view of the learned counsel for the respondent, the appellant, after desertion, voluntarily took up residence at Ernakulam, and therefore her plea for transfer the case is untenable.

7. The Apex Court in *Mona Aresh Goel v. Aresh*

Satya Goel [(2000) 9 SCC 255], *Sumita Singh v. Kumar Sanjay and another* [(2001) 10 SCC 41] and *Vaishali Shridhar Jagtap v. Shridhar Vishwanath Jagtap* [(2016) 14 SCC 356] considered the request of the wife to transfer the petition from one court to another court. In all those cases decisions were rendered on the particular facts of each case. However, the Apex Court took the common view that the convenience of the wife has to be looked into while deciding a petition for transfer of a matrimonial dispute. In *Santhini v. Vijaya Venketesh* [(2018) 1 SCC 1], the Apex Court laid down the principles that would apply while a wife seeks transfer of matrimonial dispute to a court where she can attend conveniently. The Apex Court reiterated the views taken in the earlier decisions that the husband ordinarily shall take proceedings in court in whose jurisdiction the wife resides and

that will lesser inconvenience to the parties and avoid delay. The Apex Court further observed that a statutory

right of a woman cannot be nullified by taking technical advancement and destroying her right under a law, more so, when it relates to family matters. The further observation is that dignity of woman is sustained and put on a higher pedestal if her choice is respected.

8. From the pleadings in O.P.No.2 of 2023 itself it can

be seen that the marriage between the appellant and the respondent was solemnised at Kanayannur Shiva Temple, Ernakulam, which is within the jurisdiction of the Family Court, Ernakulam. As per the provisions of Section 19 of the Hindu Marriage Act, the court within whose local limit the marriage was solemnised is the court primarily having jurisdiction. Of course, the court at the place where the parties to the marriage last resided together also has jurisdiction. However, the newly added provision, sub-section (iii-a) of Section 19 of the Hindu Marriage Act provides an advantageous position to the wife by enabling her to present a petition where she is residing on the date of presentation of the petition. When such a preferential right is created in Section 19 of the Hindu Marriage Act, and Ernakulam is her place of residence and place of convenience, the plea of the appellant for a transfer of O.P.No.2 of 2023 to the Family Court, Ernakulam is quite just and reasonable.

9. In the light of the law laid down in the aforesaid decisions, the request for transfer is liable to be allowed. Accordingly, we allow this appeal and on setting aside the

order dated 23.05.2023 in Transfer Petition (C) No.142 of

2023 of the learned Single Judge, the request for the transfer is allowed. O.P.No.2 of 2023 on the file of the Family Court, Thrissur is transferred to Family Court, Ernakulam. The Family Court, Thrissur will transmit the records to Family Court, Ernakulam forthwith. Sd/- ANIL K. NARENDRAN, JUDGE Sd/- P.G. AJITHKUMAR, JUDGE dkr APPENDIX OF TR.APPEAL(C) 5/2023 PETITIONER

ANNEXURES Annexure A-1 THE TRUE COPY OF THE MEDICAL REPORT
DATED 08.05.2023, ISSUED BY THE ASTER MEDICITY

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