

Anusree J. vs Binu S.R

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Court : Kerala

Decided On : Mar-22-2023

Judge : Honourable Mr.Justice C.S.Dias

Appeal No. : Tr.P(C)/560/2022

Appellant : Anusree J.

Respondent : Binu S.R

Judgement :

TR.P(C) NO. 560 OF 2022 1

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE C.S.DIAS WEDNESDAY, THE 22ND DAY OF MARCH 2023 / 1ST CHAITHRA, 1945 TR.P(C) NO. 560 OF 2022 OP 1477/2022 OF FAMILY COURT,TRIVANDRUM
PETITIONER/S: ANUSREE J. AGED 31 YEARS D/O.JAYADEVAN, CHERIYL HOUSE, ERAVIPEROOR P.O., VALLAMKULAM, THIRUVALLA, PATHANAMTHITTA DISTRICT - 689 541. BY ADVS. RAAJESH S.SUBRAHMANIAN V.R.RAJESH R.RAJALEKSHMI
RESPONDENT/S: BINU S.R AGED 37 YEARS S/O.SUKUMARAN, VIVANTA, KANIYAPURATHUVILA, KADAVOOR P.O., THIRUVANANTHAPURAM - 695 036. BY ADVS. MOHANANKANNAN

K. A.R.PRAVITHA(K/168/2003) THIS TRANSFER PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 22.03.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: TR.P(C) NO. 560 OF 2022 2

ORDER

The transfer petition is filed under Section 24 of the Code of Civil Procedure, 1908 (in short, 'C.P.C.'), seeking to transfer O.P.No.1477/2022 (Annexure-A1) from the Family Court, Thiruvananthapuram, to the Family Court, Thiruvalla.

2. The petitioners case, in brief, in the

memorandum of transfer petition, is that, she is the wife of the respondent. They have a son born in the wedlock. The marital relationship is strained. The petitioner and her son are residing in her parental home in Thiruvalla. The petitioner has filed O.P. No.226/2022 and O.P(HMA) No.465/2022 before the Family Court, Thiruvalla, against the respondent seeking decrees for recovery of money and divorce, respectively. The respondent is contesting the above two cases before the Family Court, Thiruvalla. Therefore, no inconvenience would be caused to the respondent in Annexure-A1 being transferred. Hence, the transfer petition.

TR.P(C) NO. 560 OF 2022 3

3. The respondent has filed a counter affidavit

refuting the allegations in the transfer petition. It is his case that the petitioner has suppressed the fact that she is employed in a bank in Thiruvananthapuram as evidenced by Annexure-R1(e) certificate. Annexures-R1(a) and R1(b) documents also prove that the petitioner owns a house in Thiruvananthapuram district. In addition to the above, the summons in Annexure-A1 was served on the petitioner in her address in Thiruvananthapuram as evidenced by Annexure-R1(b). Hence the transfer petition may be dismissed.

4. Heard; Sri.Rajesh S.Subrahmanian, the learned counsel appearing for the petitioner and Sri.K. Mohanakannan, the learned counsel appearing for the

respondent.

5. The petitioners case is that she and her child are presently residing within the jurisdiction of the Family Court, Thiruvalla.

6. It is an undisputed fact that O.P. No.226/2022 and O.P(HMA) No.465/2022 have been filed by the petitioner

TR.P(C) NO. 560 OF 2022 4 against the resp

sought for the transfer of the said cases.

7. The respondents case is that the petitioner is

employed and residing in Thiruvananthapuram and, therefore, no inconvenience would be caused to her in Annexure-A1 being prosecuted before the Family Court, Thiruvananthapuram.

8. It is well settled in a catena of decisions by the

Honble Supreme Court in Sumitha Sing v. Kumar Sanjay and another [(2001)10 SCC 41], Mona Aresh Goel v. Aresh Satya Goel [(2000) 9 SCC 255], Vaishali Shridhar Jagtap v. Shridhar Vishwanath Jagtap [AIR 2016 SC 3584], Santhini v. Vijaya Venkatesh [2017 (4) KLT 415 (SC)], N.C.V. Aiswarya v. A.S. Sharavana Karthik Sha[2022(5) KHC 185] and Valsal Nisha v.

Rajesh Soman Nair [2020(8) KLR 475], that the convenience of the woman and children has to be given preference and weightage, while ordering the transfer of a TR.P(C) NO. 560 OF 2022 5 case from one Court to another.

9. On an overall appreciation of the law and the

rival pleadings, particularly the fact that O.P.No.226/2022 and O.P(HMA) No.465/2022 are already pending before the Family Court, Thiruvalla, and the respondent is contesting the said cases before the said court, I am of the view that Annexure-A1 should also be transferred to the Family Court, Thiruvalla, so that all the cases between the parties can be consolidated and jointly tried by the same

court, which would save the precious judicial time and avoid conflict of decisions. In the above factual and legal background, I am inclined to exercise the discretionary powers of this Court under Section 24 of the C.P.C. in favour of the petitioner.

In the result, I allow the transfer petition as follows:

(i) O.P.No.1477/2022 is withdrawn and transferred from the Family Court, Thiruvananthapuram, to the Family Court, Thiruvalla.

(ii) The parties will be at liberty to move the Family Court, Thiruvalla and seek for the consolidation and joint trial of all the cases between them. TR.P(C) NO. 560 OF 2022 6

(iii) The Registry shall forward a copy of this order

to the Family Court, Thiruvananthapuram, with instructions to forthwith transmit the records in Annexure-A1 to the Family Court, Thiruvalla.

(iv) The Family Court, Thiruvalla shall, immediately on receipt of the records in Annexure-A1, post the case along with O.P.No.226/2022 and O.P(HMA) No.465/2022. Sd/-

C.S.DIAS, JUDGE okb/22.3.23 //True copy// P.S. to Judge TR.P(C) NO. 560 OF 2022 7 APPENDIX OF TR.P(C) 560/2022 RESPONDENT ANNEXURES Annexure R1(a) TRUE COPY OF THE WATER BILL ISSUED BY THE KERALA WATER AUTHORITY PETITIONER ANNEXURES Annexure A1 TRUE PHOTOCOPY OF THE OP NO.1477/2022 DATED THIRUVANANTHAPURAM. RESPONDENT ANNEXURES Annexure R1(b) TRUE COPY OF THE OWNERSHIP CERTIFICATE IN RESPECT OF THE PROPERTY AND BUILDING Annexure R1(d) TRUE COPY OF THE NOTICE SENT BY THE FAMILY COURT, THIRUVANANTHAPURAM IN OP 1477/2022 Annexure R1(e) TRUE COPY OF THE PRINT OUT TAKEN FROM THE SITE OF PUNJAB NATIONAL BANK WTH TYPED COPY Annexure R1(c) TRUE COPY OF THE LETTER SENT BY THE

PETITIONER TO THE EMPLOYER OF THE RESPONDENT, COMMANDER 31
SQN, AIR FORCE STATION, JODHPUR DATED 12/03/2022

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