

Nisha.V vs Unni.S

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Court : Kerala

Decided On : Jan-03-2023

Judge : Honourable Mr.Justice C.S.Dias

Appeal No. : Tr.P(C)/609/2022

Appellant : Nisha.V

Respondent : UNNI.S

Judgement :

TR.P(C) NO.609 OF 2022 1

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE C.S.DIAS TUESDAY, THE 3RD DAY OF JANUARY 2023 / 13TH POUSHA, 1944 TR.P(C) NO. 609 OF 2022 OPHMA 334/2022 OF FAMILY COURT, ALAPPUZHA PETITIONER/S: NISHA.V AGED 38 YEARS D/O VIJAYAN ,VALLERIL HOUSE PATHIYANKARA THRIKUNNAPUZHA P.O KARTHIKAPPALLY TALUK , PIN - 690515 BY ADVS. P.BIJIMON K.T.SEBASTIAN JACOB SAMUEL RESPONDENT/S: UNNI.S AGED 48 YEARS S/O SUGUNAN, KANIYAMPARAMBIL PUNTHALA,PURAKKAD .P.O ALAPPUZHA DISTRICT , PIN - 688561 THIS TRANSFER PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 03.01.2023, THE COURT ON THE

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.(HMA) No.334/2022 (Annexure-2) from the Family Court, Alappuzha, to the Family Court, Mavelikara.

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 has filed O.P.No.1149/2020 (Annexure-1) before the Family Court, Mavelikara, against the respondent seeking a decree for return of money and gold ornaments. The respondent is contesting the proceedings before the said court. As a counterblast to Annexure-1, the respondent has filed Annexure-2, against the petitioner, seeking a decree for restitution of conjugal rights. As the respondent is contesting Annexure-1 before the Family Court, Mavelikara, no inconvenience would be caused to him in Annexure-2 TR.P(C) NO.609 OF 2022 3 being transferred. Hence, the transfer petition.

3. Heard; Sri.P. Bijimon, the learned counsel appearing for the petitioner. Even though notice has been served on the respondent, there is no appearance for him.

4. 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, while ordering the transfer of a case from one Court to another.

5. In the light of the law laid down in the afore-cited

decisions, the uncontroverted pleadings and materials TR.P(C) NO.609 OF 2022 4 on record and the totality of the facts and circumstances of the case, particularly the fact that Annexure-1 is already pending before the Family Court, Mavelikara, and that the respondent is contesting the proceedings before the said court, I am inclined to exercise the discretionary powers of this Court under Section 24 of the C.P.C. and order the transfer of Annexure-2, so that the cases can be consolidated and jointly tried, which would save the precious judicial time, avoid conflict of decisions and multiplicity of proceedings. In the result, I allow the transfer petition as follows:

(i) O.P.(HMA) No.334/2022 is transferred from the Family Court, Alappuzha, to the Family Court, Mavelikara.

(ii) The parties will be at liberty to move the Family Court, Mavelikara and seek for the consolidation and joint trial of all the cases between them.

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

to the Family Court, Alappuzha, with instructions to forthwith transmit the records in Annexure-2 to the Family Court, Mavelikara. TR.P(C) NO.609 OF 2022 5

(iv) The Family Court, Mavelikara shall, immediately

on receipt of the records in Annexure-2, post the case along with Annexure-1. Sd/- C.S.DIAS, JUDGE okb/3.1.2023 //True copy// P.S. to Judge TR.P(C) NO.609 OF 2022 6 APPENDIX OF TR.P(C) 609/2022 PETITIONER ANNEXURES Annexure 1 THE COPY OF OP 1149/2020 FILED BY THE PETITIONER BEFORE THE FAMILY COURT AT MAVELIKARA Annexure 2 THE COPY OF THE OP (HMA)334/2022 FILED BY THE RESPONDENT BEFORE THE FAMILY COURT ALAPPUZHA