

Athulya Babu vs Somy Babu

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Court : Kerala

Decided On : Mar-31-2023

Judge : Honourable Mr.Justice C.S.Dias

Appeal No. : Tr.P(C)/764/2022

Appellant : Athulya Babu

Respondent : Somy Babu

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE C.S.DIAS FRIDAY, THE 31ST DAY OF MARCH 2023 / 10TH CHAITHRA, 1945 TR.P(C) NO. 764 OF 2022 IN OP 1533/2022 OF FAMILY COURT, MAVELIKKARA PETITIONER: ATHULYA BABU AGED 30 YEARS D/O BABU THOMAS, VILAYILPUTHENVEEDU, MYLOM P.O., MYLOM VILLAGE, KOTTARAKARA TALUK, KOLLAM DISTRICT., PIN - 691560 BY ADVS. K.V.ANIL KUMAR SWAPNA VIJAYAN RADHIKA S.ANIL RESPONDENT/S: SOMY BABU AGED 35 YEARS S/O BABU GEORGE, S.S. VILLA, VALACHAL, VALLIKUNNAM VILLAGE, MAVELIKARA TALUK, ALAPPUZHA DISTRICT., PIN - THIS TRANSFER PETITION (CIVIL) HAVING COME UP FOR ADMISSION

ON 31.03.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: :2: Dated this the 31st day of March, 2023

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.1533/2022 (Annexure-A) from the Family Court, Mavelikkara to the Family Court, Kottarakkara.

2. The petitioners case, in brief, in the

memorandum of transfer petition is that, she is the wife of the respondent. The marital relationship is strained. The petitioner has filed O.P.(Divorce)No.157/2022 before the Family Court, Kottarakkara, against the respondent, for a decree of divorce. The respondent is contesting the above original petition before the said court. Therefore, no inconvenience would cause to him, in Annexure-A being transferred. Hence, the transfer petition.

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

4. The law with respect to transfer of

proceedings, particularly matrimonial disputes, is no longer res integra, in view of the categorical declaration of law by the Hon'ble 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]. The Hon'ble Supreme Court has held that it is the convenience of the woman and children that has to be

:4: looked into, 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 on record and the totality of the facts and circumstances of the case, particularly the fact that O.P. (Divorce)No.157/2022 is already pending before the Family Court, Kottarakkara, and the respondent is contesting the proceeding 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-A, so that the cases can be consolidated and jointly tried by the same court, which would save precious judicial time and avoid conflict of decisions.

In the result, I allow the transfer petition as follows: :5:

(i) O.P.No.1533/2022 is transferred from the Family Court, Mavelikkara to the Family Court, Kottarakkara.

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

(iii) The Registry shall forthwith forward a copy of the order to the Family Court, Mavelikkara with instructions to transmit the records in Annexure-A to the Family Court, Kottarakkara.

(iv) The Family Court, Kottarakkara shall, immediately on receipt of the records in Annexure-A, post the case along with O.P. (Divorce)No.157/2022.

Sd/- C.S.DIAS,JUDGE DST/31.03.2023 //True copy/ P.A.To Judge :6: APPENDIX
PETITIONER ANNEXURES Annexure A1 TRUE COPY OF O.P. NO. 525 OF
2022 ON THE FILES OF FAMILY COURT, OTTAPALAM DATED 05.03.2022
Annexure A2 TRUE COPY OF O.P. NO. 1122 OF 2022 ON THE FILES OF
FAMILY COURT, MALAPPURAM DATED 12.10.2022 RESPONDENTS
EXHIBITS: NIL

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