

Lincy vs Alex Antony

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Court : Kerala

Decided On : Nov-01-2022

Judge : Honourable Mr.Justice C.S.Dias

Appeal No. : Tr.P(C)/32/2022

Appellant : LINCY

Respondent : Alex Antony

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE C.S.DIAS TUESDAY, THE 1ST DAY OF NOVEMBER 2022 / 10TH KARTHIKA, 1944 TR.P(C) NO. 32 OF 2022 OP No.1639/2018 & OP 64/2021 OF FAMILY COURT,THRISSUR PETITIONER: LINCY AGED 40 YEARS D/O. LONAPPAN, MALIYEKKAL ERANDATH (H), PUTHENCHIRA (P.O), TRISSUR-680 682 BY ADV P.JINISH PAUL RESPONDENT: ALEX ANTONY AGED 42 YEARS S/O. ANTONY, THOKALATH (H) OLERIKKARA P.O., TRISSUR-680 012 BY ADVS. R.DIVAKARAN HARIKRISHNAN V.A KRISHNENDHU V.B THIS TRANSFER PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 01.11.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: TR.P(C)

ORDER

The transfer petition is filed under Sec.24 of the Code of Civil Procedure, seeking to transfer O.P. No.1639/2018 (Annexure A1) and O.P. No.64/2021(Annexure A3) from the Family Court, Thrissur to the Family Court, Irinjalakuda.

2. The petitioners case, in brief, in the memorandum of transfer petition is that, she is the wife of the respondent. They have two children born in their

wedlock. The marital relationship is strained. The respondent has filed Annexure A1 and A3 against the petitioner before the Family Court, Thrissur, seeking a decree of divorce and a decree for declaration of title and ownership over the property. The respondent has also filed O.P. No.676/2020 (Annexure A2) against the petitioner, before the Family Court, Irinjalakuda, seeking TR.P(C) NO. 32 OF 2022 3

an order for the custody of the children. As the respondent has willfully refused to maintain the petitioner and the children, they have filed M.C. No.206/2021 (Annexure A4) before the Family Court, Irinjalakuda, against the respondent for an order of maintenance. The petitioner has also filed O.P. No.1316/2021 (Annexure A5) against the respondent, before the same court, seeking a decree for restitution of conjugal rights. The respondent is contesting Annexures A2, A4 and A5 before the Family Court, Irinjalakuda. The children are residing within the jurisdiction of the Family Court, Irinjalakuda. Therefore, no inconvenience would be caused to the respondent, if Annexures A1 and A3 are transferred. On the contrary, if the cases are not transferred, it would cause severe hardship and inconvenience to the petitioner and the children, which has to be give due weightage and preference. Hence the transfer petition.

3. The respondent has filed a counter affidavit TR.P(C) NO. 32 OF 2022 4 refuting the allegations in the transfer petition. He has contended that the Family Court, Irinjalakuda has no jurisdiction to entertain Annexures A1 and A3. No inconvenience would be caused to the petitioner, if Annexures A1 and A3 are not

transferred. Hence, the transfer petition may be dismissed.

4. Heard; Sri.Jinish Paul P, the learned counsel appearing for the petitioner and Sri.R.Divakaran, the learned counsel appearing for the respondent.

5. 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 [2002 KHC 1889], Mona Aresh Goel V. Aresh Satya Goel [2000 KHC 1835], Vaishali Shridhar Jagtap V. Shridhar Vishwanath Jagtap [2016 KHC 6489], Santhini V. Vijaya Venkatesh [2017 (5) KHC 48] and Aiswarya N.C.V. v. A.S. Saravana Karthik Sha [2022

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(5) KHC 185(SC)]. The Honble Supreme Court has held

that it is the convenience of the woman and children that has to be looked into, while ordering the transfer of a case from one Court to another.

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

decisions, the pleadings and materials on record, the totality of the facts and circumstances of the case, particularly the fact that Annexures A2, A4 and A5 are already pending before the Family Court, Irinjalakuda, and the respondent is contesting the above proceedings before the said court, I am inclined to exercise the discretionary powers of this Court under Section 24 of the Code of Civil Procedure and order the transfer of Annexures A1 and A3, so that the cases can be consolidated and jointly tried, which would save precious judicial time and avoid conflict of decisions.

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

(i) O.P No.1639/2018 and O.P.No.64/2021 are TR.P(C) NO. 32 OF 2022 6 transferred from the Family Court, Thrissur to the Family Court, Irinjalakuda.

(ii) The parties would be at liberty to move the Family Court, Irinjalakuda 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, Thrissur with instructions to forthwith transmit the records in Annexures A1 and A3 to the Family Court, Irinjalakuda.

(iv) The Family Court, Irinjalakuda shall, immediately on the receipt of the records in Annexures A1 and A3, post the case along with Annexures A2, A4 and A5.

Sd/- C.S.DIAS, JUDGE rmm/01/11/2022 TR.P(C) NO. 32 OF 2022 7 APPENDIX OF TR.P(C) 32/2022 PETITIONER ANNEXURES Annexure A1 A TRUE COPY OF THE OP NO.1639/2018 BEFORE THE FAMILY COURT, TRISSUR FILED BY THE RESPONDENT Annexure A2 A TRUE COPY OF THE GO (P) NO.676/2020 BEFORE THE FAMILY COURT, IRINJALAKUDA FILED BY THE RESPONDENT Annexure A3 A TRUE COPY OF THE OP NO.64/2021 BEFORE THE FAMILY COURT, TRISSUR FILED BY THE RESPONDENT Annexure A4 A TRUE COPY OF THE MC NO.206/2021 FILED BY THE PETITIONER BEFORE THE FAMILY COURT Annexure A5 A TRUE COPY OF THE OP NO.1316/2021 FILED BY THE PETITIONER ON THE FILES OF FAMILY COURT, IRINJALAKUDA

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