

Devika Rani vs P.K.Subhash

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Court : Kerala

Decided On : Aug-31-2022

Judge : Honourable Mr.Justice C.S.Dias

Appeal No. : Tr.P(C)/280/2022

Appellant : Devika Rani

Respondent : P.K.Subhash

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE C.S.DIAS WEDNESDAY, THE 31ST DAY OF AUGUST 2022 / 9TH BHADRA, 1944 THE ORDER/JUDGMENT IN OP 1050/2013 OF FAMILY COURT,TRIVANDRUM PETITIONER/S: DEVIKA RANI AGED 62 YEARS D/O LATE S.RAMACHANDRAN PILLAI., AGED 62 YEARS, CHITHRALAYAM,KACHERI ROAD, PUNALUR, PIN - 691305 BY ADVS. AJAYA KUMAR. G M.JAYAKRISHNAN RESPONDENT/S: P.K.SUBHASH AGED 64 YEARS S/O P.KUMARADAS., AGED 64 YEARS, LEKSHMI PRIYA, T.C. 37/1509(1),PUNNAKKAL ROAD, FORT P.O.,THIRUVANANTHAPURAM, PIN - 695023 BY ADVS. SHAJIN S.HAMEED U.S.GANESH KUMAR(K/945/1995) THIS TRANSFER

PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 31.08.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER

The transfer petition is filed under Sec.24 of the Code of Civil Procedure, seeking to transfer O.P. No.1050/2013 (Annexure A1) from the Family Court, Thiruvananthapuram to the Family Court, Kottarakara.

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 the wedlock. The respondent has filed Annexure A1, for a decree that the petitioner is not his legally wedded wife and also for other ancillary reliefs. The petitioner has filed a written statement with a counter claim, inter-alia, to declare that she is the wife of the respondent and that she has the right to reside in the counter claim schedule property. But, the counter

claim was dismissed on 07.08.2017. Thereafter, Annexure A1 was also dismissed. Annexure A1 was restored to file on 13.09.2018. The petitioner's mother is bedridden. The Family Court, Thiruvananthapuram is situated 68 kilometers away from the residence of the petitioner. Therefore, it would be difficult for her to contest Annexure A1 before the Family Court, Thiruvananthapuram. Hence, the transfer petition.

3. Heard; Sri. Ajaya Kumar, the learned counsel appearing for the petitioner and Sri.Shajin S. Hameed, the learned counsel appearing for the respondent.

4. Admittedly, Annexure A1 was filed as early as

on 10.07.2013. The petitioner herself had filed a counter claim with a written statement. She has been contesting Annexure A1 for the last nine years before the Family Court, Thiruvananthapuram. It is now, when the original petition is ripe for trial, that the petitioner has come up with the plea of inconvenience to travel from Punalur to Thiruvananthapuram. I do not find any bonafides in the claim.

Moreover, the

respondent is aged 64 years and residing in Thiruvananthapuram.

5. The Division Bench of this Court in Vidhya

Mundekkat vs. Akhilesh Jayaram [2021 (6) KHC 506] has categorically held that there is no invariable rule that, whenever a wife makes a request only for transfer on the ground of inconvenience, this Court is obliged to exercise the discretionary powers under Section 24 of the Code of Civil Procedure, 1908. Taking into consideration the fact that Annexure A1 has been pending before the Family Court,

Thiruvananthapuram since 2013 and that the petitioner herself has subjected to the jurisdiction of the Court by filing a written statement with a counter claim and now the suit stands posted for trial, I am not inclined to exercise the discretionary powers of this Court under Section 24 of the Code of Civil Procedure and order the transfer of Annexure A1. However, since the original petition is of the year 2013, I direct the

Family Court, Thiruvananthapuram to consider and dispose of Annexure A1 in accordance with law, as expeditiously as possible. Sd/- C.S.DIAS, JUDGE
rkc/31.08.22 APPENDIX OF TR.P(C) 280/2022 PETITIONER ANNEXURES
Annexure A1 A TRUE COPY OF THE ORIGINAL PETITION IN O.P. NO.
1050/2013 ON THE FILES OF THE FAMILY COURT ,THIRUVANANTHAPURAM

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