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Athira K.P vs Ajith

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Court : Kerala

Decided On : Jun-03-2022

Judge : Honourable Mr.Justice C.S.Dias

Appeal No. : Tr.P(C)/348/2021

Appellant : Athira K.P

Respondent : AJITH

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE C.S.DIAS FRIDAY, THE 3RD DAY OF JUNE 2022 / 13TH JYAISHTA, 1944 TR.P(C) NO. 348 OF 2021 TO TRANSFER OPGW 396/2020 OF FAMILY COURT, TIRUR TO THE FAMILY COURT OTTAPALAM. PETITIONER/S: ATHIRA K.P AGED 28 YEARS D/O. GOVINDANKUTTY, AMMETH HOUSE, THIRUMITTACODE POST, PATTAMBI TALUK, PALAKKAD DISTRICT 679 536 BY ADV R.SREEHARI RESPONDENT/S: AJITH AGED 37 YEARS S/O. ASHOKAN NAIR,PANDARATHIL HOUSE, KRISHNA KRIPA, PONNANI NAGARAM AMSOM, PALLAPROM DESOM, PONNANI POST, PONNANI TALUK, MALAPPURAM DISTRICT 679 577 BY ADVS. K.P.PRADEEP HAREESH M.R. RASMI NAIR T.

T.T.BIJU T.THASMI M.J.ANOOPA THIS TRANSFER PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 03.06.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.S DIAS,J.

---------- ---------- Dated this the 3rd day of June, 2022.

ORDER

The transfer petition is filed under Sec.24 of the Code of Civil Procedure, seeking to transfer O.P (G &W) No.396/2020 (Annexure A2) from the Family Court, Tirur to the Family Court, Ottapalam.

2. The petitioners case, in brief, in the memorandum of transfer petition is that, she is the wife of the respondent. They have two sons, who are aged 4 and 3 years born in the wedlock. Due to the matrimonial cruelty meted out on her by the respondent, the Pattambi Police have registered Crime No.66/2020 against the respondent. The respondent has filed Annexure A2, seeking an order for custody of the children. The petitioner and the children are residing at Pattambi in the petitioners natal home. There is no person to chaperone the petitioner and the

children from Pattambi to Tirur. Being a custody matter, necessarily, the children would also have to travel to the Family Court at Tirur, which is more than 100 kms from their residence, and would cause severe hardship and inconvenience to the petitioner and the children. Hence the transfer petition.

3. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent.

4. The law with respect to transfer of

proceedings, particularly matrimonial disputes, is no longer res-integra, in view of the categoric 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)] Valsal Nisha v. Rajesh Soman Nair [2020(8) KLR 475]. 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.

5. In the light of the uncontroverted pleadings

and materials on record, the totality of the facts and circumstances of the case, particularly the fact that the petitioner and two minor children are residing at Pattambi, and the law laid down by the Hon'ble Supreme Court in the afore-cited decisions, I am inclined to exercise the discretionary powers of this Court under Section 24 of the Code of Civil Procedure. In the result, I allow the transfer petition by

ordering the transfer of O.P (G &W) No.396/2020 from the Family Court, Tirur, to the Family Court, Ottapalam. The Registry shall forward a copy of this judgment to the Family Court, Tirur with instructions to forthwith transmit the records in Annexure A2 to the Family Court, Ottapalam. The Family Court, Ottapalam shall, immediately on the receipt of the records in Annexure A2, issue notice to the parties for their appearance .

sd/- Sks/3.6.2022 C.S.DIAS, JUDGE APPENDIX OF TR.P(C) 348/2021 PETITIONER ANNEXURES Annexure A1 PHOTO COPY OF MARRIAGE CERTIFICATE Annexure A2 PHOTO COPY OF OP(G AND W) 396/2020 OF FAMILY COURT, TIRUR

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