

Namitha, vs Don,

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Court : Kerala

Decided On : Jun-09-2022

Judge : Honourable Mr.Justice C.S.Dias

Appeal No. : Tr.P(C)/462/2021

Appellant : Namitha,

Respondent : DON,

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE C.S.DIAS THURSDAY,
THE 9TH DAY OF JUNE 2022 / 19TH JYAISHTA, 1944 TR.P(C) NO.
462 OF 2021 TO TRANSFER OP 963/2021 OF FAMILY
COURT,THRISSUR TO THE FAMIL COURT, ERNAKULAM
PETITIONER/S: NAMITHA, AGED 31 YEARS W/O. DON,
PARANIKKULANGARA, PARAKKADAV P.O., ERNAKULAM-683579.
BY ADVS. JOBY JACOB PULICKEKUDY ANIL GEORGE
RESPONDENT/S: DON, AGED 34 YEARS, S/O. KIDANGAN BENNY,
KIDANGAN HOUSE, PERAMANGALAM P.O., PUZHAKKAL,
THRISSUR- 680545, REPRESENTED BY HIS POWER OF ATTORNEY
HOLDER, BENNY, S/O. JOSEPH, PERAMANGALAM P.O., THRISSUR

DISTRICT. BY ADV N.L.BITTO THIS TRANSFER PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 09.06.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.S DIAS,J.

----- Dated this the 9th day of
June, 2022.

ORDER

The transfer petition is filed under Sec.24 of the Code of Civil Procedure, seeking to transfer O.P No.963/2021 (Annexure A) from the Family Court, Thrissur to the Family Court, Ernakulam.

2. The petitioners case, in brief, in the

memorandum of transfer petition is that, she is the wife of the respondent. They have a four year old son born in their wedlock. The respondent is employed abroad. The respondent has treated the petitioner with cruelty. However, he has cunningly filed Annexure A before the Family Court, Thrissur, seeking a decree for restitution

of conjugal rights.

The petitioner is residing atErn

Annexure A. Hence, the transfer petition.

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

4. The learned counsel appearing for the petitioner submitted that in addition to Annexure A, the respondent has also filed OP No.2445/2021 before the Family Court, Ernakulam, seeking an order for the custody of the child. Moreover, the respondent is employed abroad and he is prosecuting the petition through power of attorney holder.

5. The learned counsel appearing for the

respondent vehemently opposed the transfer petition on the ground that the power of attorney holder of the petitioner is 70 years old. He would find it difficult to travel from Thrissur to Ernakulam to defend Annexure A. However, the respondent concedes to the fact that he has filed OP 2445/2021 before the Family Court, Ernakulam.

6. The sole point that arises for consideration in the transfer petition is: whether there is any justifiable ground to exercise the discretionary powers of this Court under Section 24 of the Code of Civil Procedure.

7. It is conceded by the respondent that he is

prosecuting the petition through his power of attorney holder. It is trite that the convenience of the power of attorney holder cannot be given any weightage in

order to exercise the discretionary powers of this Court

under Section 24 of the Code of Civil Procedure. Moreover, the respondent himself has filed OP seeking an order for custody of the child. The petitioner and child are residing at Ernakulam. Therefore, since the respondent is employed abroad, it is inconsequential for him whether the cases are being tried before the Family Court, Ernakulam or Thrissur.

8. 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] and Santhini V. Vijaya Venkatesh [2017 (5) KHC 48]. 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.

9. 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 the respondent is employed abroad and he himself has filed OP 2445/2021 before the Family Court, Ernakulam, 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 and transfer OP 963/2021 from the Family Court, Thrissur to the Family Court, Ernakulam. In the result, I allow the transfer petition by ordering the transfer of O.P No.963/2021 from the Family Court, Thrissur to the Family Court, Ernakulam. The parties would be at liberty to seek for consolidation and joint trial of all the cases between them. The Registry shall forward a copy of this judgment to the Family Court, Thrissur with instructions to forthwith transmit the records in Annexure A to the Family Court, Ernakulam. The Family Court, Ernakulam shall, immediately on the receipt of the records in Annexure A, post the case along with OP 2445/2021. SD/- Sks/9.6.2022 C.S.DIAS, JUDGE APPENDIX OF TR.P(C) 462/2021 PETITIONER ANNEXURES Annexure A TRUE PHOTOCOPY OF THE ORIGINAL PETITION NO. 963/2021. Annexure B TRUE PHOTOCOPY NOTICE DATED 12/08/2021 TO APPEAR BEFORE THE FAMILY COURT ON

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