

Jerin Joy vs Lucy Simon

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SooperKanoon Citation : sooperkanoon.com/1601428

Court : Kerala

Decided On : Jul-30-2021

Judge : Honourable Mr. Justice a.Muhamed Mustaque,Honourable Dr. Justice Kauser Edappagath

Appeal No. : OP (FC)/88/2021

Appellant : Jerin Joy

Respondent : Lucy Simon

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE & THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH FRIDAY, THE 30TH DAY OF JULY 2021 / 8TH SRAVANA, 1943 OP (FC) NO. 88 OF 2021 AGAINST THE ORDER/JUDGMENT IN OP 235/2017 OF FAMILY COURT, IRINJALAKUDA, THRISSUR PETITIONER/S: JERIN JOY AGED 39 YEARS S/O.JOY, RESIDING AT AYIROORKARAN HOUSE, KORATTY P.O., THRISSUR DISTRICT-680 308. BY ADV G.SREEKUMAR (CHELUR) RESPONDENT/S: LUCY SIMON AGED 39 YEARS D/O.SAIMON JOHN, RESIDING AT MULLATHERI HOUSE, HOUSE

NO.50/438-A, MYTHRI NAGAR, MANIMALA ROAD, EDAPPALLY P.O., ERNAKULAM DISTRICT-682 024. BY ADVS. SMT.TISSY ROSE K CHERIYAN SMT.GRACE MARIA JOSE KEERTHANA V. THIS ORIGINAL PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 30.07.2021, ALONG WITH Tr.P(C).90/2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE & THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH FRIDAY, THE 30TH DAY OF JULY 2021 / 8TH SRAVANA, 1943 TR.P(C) NO. 90 OF 2021 AGAINST THE ORDER/JUDGMENT IN OPDIV 235/2017 OF FAMILY COURT, IRINJALAKUDA, THRISSUR PETITIONER/S: NRS. LUCY SIMON, AGED 37 YEARS D/O. SIMON JOHN, RESIDING AT MULLAKKERI HOUSE, HOUSE NO. 50/438-A, MYTHRI NAGAR, MANIMALA ROAD, EDAPPALLY P.O., EDAPPALLY SOUTH VILLAGE, ERNAKULAM DISTRICT, PIN - 682024. BY ADVS. TISSY ROSE K CHERIYAN SMT.GRACE MARIA JOSE RESPONDENT/S: MR. JERIN JOY AGED 38 YEARS S/O. JOY A.P, AYROOKKARAN HOUSE, JUMUNA NAGAR KARATTY, KORATTY P.O, KORATTY KIZHAKKUMMURY VILLAGE, CHALAKKUDY TALUK, THRISSUR DISTRICT. BY ADV G.SREEKUMAR (CHELUR) THIS TRANSFER PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 30.07.2021, ALONG WITH OP (FC).88/2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

[OP (FC) No.88/2021 & Tr.P.(C)No.90/2021]

A.Muhamed Mustaque, J.

These matters have been taken up together as the

issues involved in both cases are interlinked and

connected. O.P.(FC) No.88/2021 is filed for expeditious disposal of Exts.P6 and P7 proceedings pending before the Family Court, Irinjalakuda. Ext.P7 is the application to enforce compromise decree in regard to the custody of the ward. While the matter is pending before this Court, the respondent-mother filed Tr.P.(C) No.90/2021 to transfer Exts.P6 and P7 to the Family Court, Ernakulam. It seems that the respondent-mother filed a petition to modify the compromise decree in regard to the custody of the child. The respondent moved the Family Court, Ernakulam in O.P.(G&W) No.383/2021 with the above-said relief. The above original petition is pending before the Family Court, Ernakulam. The mother and ward are permanently now residing within the jurisdiction of the Family Court, Ernakulam. Though O.P.(G&W)No.383/2021 is filed as a separate proceeding, the relief as sought in the above original petition is the modification of the compromise decree. We are of the view that the transfer request made by the mother has to be allowed and all the proceedings in O.P.(Div.)No.235/2017 on the file of the Family Court, Irinjalakuda leading to the compromise decree along with the present proceedings shall be transferred to the Family Court, Ernakulam. The father is also given liberty to seek any modification of the compromise decree in O.P.(Div.)No.235/2017 on any legally sustainable grounds. If such an application is filed, it shall be taken up along with

O.P(G&W)No.383/2021. We direct the Family Court, Irinjalakuda, to transfer the entire records in O.P.

(Div.)No.235/2017 to the Family Court, Ernakulam, within a period of three weeks. The Family Court, Ernakulam, shall tag O.P.(G & W) No.383/2021 along with the proceedings in O.P.(Div)No.235/2017 and any other applications filed therein by the father and dispose the same in accordance with law. We consider the submissions of the mother and we make following arrangements until it varied in appropriate proceedings before the Family Court either in an interlocutory application or the final order to be passed. The father is allowed to have custody of the child on every first and third Fridays at 4 pm from the premises of the Family Court, Ernakulam and the child shall be returned through the premises of the

Family Court, Ernakulam on ensuing Saturday at 5 pm. In the event the father leaves abroad, he shall be permitted to contact the child through video call on every Friday evening between 7 pm to 7.30 pm (Indian Standard Time). Sd/- A.MUHAMED MUSTAQUE JUDGE Sd/- DR. KAUSER EDAPPAGATH JUDGE In APPENDIX OF TR.P(C) 90/2021 PETITIONER ANNEXURE ANNEXURE A1 A TRUE COPY OF THE CERTIFICATE ISSUED FROM ELITE MISSION HOSPITAL, THRISSUR ON 20.06.2015. ANNEXURE A2 A TRUE COPY OF THE CERTIFICATE ISSUED FROM NAVAJYOTHI CENTRE FOR CHILD BEHAVIOURAL SCIENCES. ANNEXURE A3 A TRUE COPY OF THE JUDGMENT IN OP.235/2017 DATED 22.05.2019. ANNEXURE A4 A TRUE COPY OF THE JUDGMENT IN IA NO. COURT, IRINGALAKKUDA DATED 22.05.2019. ANNEXURE A5 A TRUE COPY OF THE PETITION EP NO.34/2020 IN OP. 235 OF 2017 DATED 27.11.2020 BEFORE THE FAMILY COURT, IRINGALAKKUDA. ANNEXURE A6 A TRUE COPY OF THE PETITION EA.84/2020 IN OP NO.235/2017 DATED 24.12.2020 BEFORE THE FAMILY COURT, IRINGALAKKUDA. ANNEXURE A7 A TRUE COPY OF THE PETITION OP (G AND W) NO.383/2021 DATED 02.02.2021 BEFORE THE ERNAKULAM FAMILY COURT. APPENDIX OF OP (FC) 88/2021 PETITIONER EXHIBITS EXHIBIT P1 A TRUE COPY OF THE JOINT PETITION FILED IN OP NO.235 OF 2017 ON THE FILE OF THE FAMILY COURT AT IRINJALAKUDA DATED 20.03.2017. EXHIBIT P2 A TRUE COPY OF THE JUDGMENT DELIVERED IN OP NO.235 OF 2017 DATED 23.10.2017 ON THE FILE OF THE FAMILY COURT, IRINJALAKUDA. EXHIBIT P3 A TRUE COPY OF THE JUDGMENT IN OP (FC)NO.499 OF 19 DATED 11.10.19 BY THIS HON'BLE COURT. EXHIBIT P4 A TRUE COPY OF THE WRIT PETITION FILED AS WP NO.9992 OF 2020 BEFORE THIS HON'BLE COURT DATED 1.05.20. EXHIBIT P5 A TRUE COPY OF THE INTERIM ORDER PASSED BY THIS HON'BLE COURT IN WPC NO.9992 OF 20 DATED 27.05.20. EXHIBIT P6 A TRUE COPY OF THE EP NO.34 OF 20 IN OP NO.235 OF 17 FILED DATED 27.11.20 ON THE FILE OF THE FAMILY COURT, IRINJALAKUDA. EXHIBIT P7 A TRUE COPY OF THE EA NO.84 OF 20 IN EP NO.34 OF 20 IN OP NO.235 OF 17 FILED DATED 24.12.20 ON THE FILE OF THE FAMILY COURT, IRINJALAKUDA.