

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE V.G.ARUN

MONDAY, THE 26TH DAY OF JULY 2021 / 4TH SRAVANA, 1943

TR.P(C) NO. 19 OF 2021

AGAINST THE ORDER/JUDGMENT IN OP 1569/2019 OF FAMILY COURT,KOZHIKODE,
KOZHIKODE

PETITIONER/S:

JASNA P.V.,
AGED 30 YEARS
D/O. ALIKKOYA, KIZHAKKEDATH HOUSE, PUTHUKODE P.O,
RAMANATTUKARA VIA, CHERUKAVU, KONDOTTY, MALAPPURAM
DISTRICT.

BY ADV K.RAKESH

RESPONDENT/S:

MOHAMMED,
AGED 63 YEARS
S/O. BICHAMU, ASMAS HOUSE, FEROKE COLLEGE P.O,
KOZHIKKODE, PIN - 673032.

BY ADV SRI.E.C.AHAMED FAZIL

THIS TRANSFER PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
26.07.2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 26th day of July, 2021

The petitioner is the respondent in OP No.1569 of 2019 on the files of the Family Court, Kozhikode, filed her father-in-law seeking custody of the minor child 'Aban Muhammed', aged 7 years. The petitioner, who is a teacher at Thurakkal and a permanent resident of Peringavu, within the limits of the Family Court, Malappuram, seeks transfer of the original petition from the Family Court, Kozhikode to the Family Court, Malappuram.

2. Heard, Sri.K.Rakesh, learned counsel for the petitioner and Sri.Admed Fazil, learned counsel for the respondent.

3.Learned counsel for the petitioner submitted that the minor child is residing within the limits of the Family Court Malappuram and as per Section 9 of the Guardian and Wards Act, the original petition should be filed before that Family Court within the limits of which the minor is residing. It is contended that the petitioner has filed MC No.53 of 2020 before the Family

Court, Malappuram and will be put to extreme difficulties, if compelled to contest OP No.1569 of 2019 before the Family Court, Kozhikode.

4.Sri. Ahamed Fazil, learned counsel for the respondent, refuted the contentions and submitted that, four earlier original petitions between the spouses were heard and disposed of by the Family Court, Kozhikode. Among those cases, MC No.552 of 2014, which was originally filed before the Family Court, Malappuram was transferred to the Family Court Kozhikode, *vide* Annexure R1(a) order of this Court. Further, the respondent being a senior citizen aged 65 years, may not be compelled to appear before the Family Court at Malappuram, traveling more than 35kms. It is contended that, rather than seeking transfer of the cases under Section 24, the petitioner could require the Court to return the original petition under Order 7 Rule 10 of Civil Procedure Code, for presentation before the proper Court.

5.Having heard the learned counsel, I find the prayer for transfer to be well founded. It is true that the earlier proceedings between the petitioner and the respondent's son were decided by

the Family Court, Kozhikode. I also take note of the fact that one among those cases was transferred by this court from Malappuram to Kozhikode. At the same time, the mandate of Section 9 of the Guardian and Wards Act, which is specific to the effect that the court within whose limits the child is ordinarily resident is having jurisdiction to entertain the petition for guardianship and custody is the more relevant consideration. Yet another relevant factor is the pendency of the petitioner's maintenance case before the Family Court, Malappuram.

6.As held by the Honourable Supreme Court in *Sumita Singh v Kumar Sanjay and another [(2001) 10 SCC 41, Rajani Kishore Pardesh v Kishore Babulal Pardesh [(2005) 1 SCC 237* and a plethora of other decisions, in transfer petitions arising from matrimonial cases, convenience of the wife should be preferred over that of the husband. Hence, I am inclined to allow the petitioner's request for transfer.

In the result, Tr.P.C No. 19 of 2021 is allowed. O.P.No. 1569 of 2019 on the files of the Family Court, Kozhikode shall

forthwith be transferred to the Family Court, Malappuram. The transferee Court shall not insist on the personal presence of the respondent, unless absolutely necessary.

Sd/-
V.G ARUN
JUDGE

SJ

APPENDIX OF TR.P(C) 19/2021

PETITIONER ANNEXURE

ANNEXURE A TRUE COPY OF THE PETITION IN OP NO.1569/2019
ON THE FILES OF FAMILY COURT, KOZHIKKODE,
FILED BY THE RESPONDENT DATED 18.12.2019.

ANNEXURE R1 (A) TRUE COPY OF ORDER DATED 27.10.2015 IN
TR.P(CRL) NO.52 OF 2015 PASSED BY THE
HONOURABLE HIGH COURT OF KERALA

ANNEXURE R1 (B) TRUE COPY OF THE CASE STATUES PRINTED FROM THE
DATA BASE OF KERALA HIGH COURT WEBSITE OF
TR.P(C) NO.150 OF 2015 ON THE FILES OF
HONOURABLE HIGH COURT OF KERALA