

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

FRIDAY, THE 9TH DAY OF JANUARY 2015/19TH POUSHA, 1936

OP(C).No. 59 of 2015 (O)

**OP(TRANSFER) 77/2014 of DISTRICT & SESSIONS COURT, ALAPPUZHA
DATED 27-11-2014**

PETITIONER(S)/PETITIONERS/DEFENDANTS :

- 1. BAJU, AGED 35 YEARS,
S/O. BALAN PILLAI, EZHAVARETHU HOUSE, CHERIVALLUR MURI
CHERIYANADU VILLAGE, CHENGANNUR TALUK.**
- 2. BINOKUMAR, AGED 30 YEARS
S/O. BALAN PILLAI, EZHAVARETHU HOUSE, CHERIVALLUR MURI
CHERIYANADU VILLAGE, CHENGANNUR TALUK.**
- 3. SANTHAMMA, AGED 65 YEARS
W/O. BALAN PILLAI, EZHAVARETHU HOUSE, CHERIVALLUR MURI
CHERIYANADU VILLAGE, CHENGANNUR TALUK.**

**BY ADVS.SRI.R.PADMAKUMAR
SRI.N.ASHOK KUMAR**

RESPONDENT(S)/RESPONDENT/PLAINTIFF :

**BINDU SABARI, AGED 37 YEARS
D/O. RETNAMMA, MOOTHASSERIL VADAKKETHIL HOUSE
THULAMPARAMBU VADAKKUM MURI, HARIPAD VILLAGE
KARTHIKAPPALLY TALUK, PIN-690 514.**

**THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 09-01-2015, ALONG
WITH OP(C).NO.60/2015 THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

PJ

OP(C).No. 59 of 2015 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

- P1 :** COPY OF COMMON ORDER DTD.27.11.2014 IN OP(TRANSFER)NO.76/2014 AND OP(TRANSFER)NO.77/2014 OF THE DISTRICT AND SESSIONS COURT, ALAPPUZHA.
- P2 :** COPY OF THE ORIGINAL PETITION NUMBERED AS OP NO.703/2013 OF THE FAMILY COURT, ALAPPUZHA, RENUMBERED AS OP NO.571/2013 OF FAMILY COURT, MAVELIKKARA.
- P3 :** COPY OF THE PLAINT IN OS NO.196/13 OF THE MUNSIF COURT, CHENGANNUR.
- P4 :** COPY OF THE PLAINT IN OS NO.130/14 OF THE MUNSIF COURT, CHENGANNUR.

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

P.BHAVADASAN, J.

O.P.(C) Nos. 59 & 60 of 2015

Dated this the 09th day of January, 2015

J U D G M E N T

Petitioners in these petitions sought transfer of two suits namely O.S.No.130/2014 and O.S.No.196/2013 to the Family Court concerned where similar matters were pending between the same parties.

2. The court below holding that even though the subject matter is the same, parties in the two suits were arrayed as in different capacities and therefore the Family Court may not have jurisdiction and declined to grant the prayer for transfer.

3. If the case of the petitioners before this Court is that the subject matter of the suits fall squarely within the ambit and powers of the Family Court, the remedy is to point out the same to the Munsiff Court and inform that court that it has no jurisdiction to try the matter. It may not be proper if it is to be found that the suit is not covered by

the provisions of the Family Court Act to transfer the same to the Family Court. If on the other hand, the Munsiff Court has no jurisdiction, then again, it will not be proper to order transfer to the Family Court. The proper course would be to appraise the court that it cannot entertain the plaint and the plaint ought to be returned to those presented before the proper court.

4. Reserving the liberty of the petitioners to agitate the above questions i.e. that the Munisiff Court had no jurisdiction over the subject matter of the suit and the suit can be tried only by the Family Court, these petitions are disposed of.

If any such contentions arise, the observations of the court below in the transfer petitions shall not stand the way of trial court considering the suits.

**P.BHAVADASAN
JUDGE**

ds