

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

TUESDAY, THE 26TH DAY OF JULY 2016/4TH SRAVANA, 1938

Tr.P(C).No. 560 of 2014

TO TRANSFER O.P(H.M.A)NO.244/2010 AND O.P.NO.83/2011 OF FAMILY COURT,
THIRUVALLA TO FAMILY COURT, PATHANAMTHITTA

PETITIONER(S) :

SUGATHAN K.R,
S/O.PARAMESWARAN PILLAI, KAVINAL HOUSE,
ULAVUKADU, NOORANADU 690 504.

BY ADVS. SRI.S.VINOD BHAT
SRI.LEGITH T.KOTTAKKAL

RESPONDENT(S) :

1. JYOTHI,
D/O.CHANDRASEKHARAN PILLAI, ASWINI, POOZHIKKADU,
KUDASSANADU P.O, PIN 689 512.
2. N.SATHEESH KUMAR,
KOLAPPATTU THEKKETHIL , POOZHIKKADU,
KUDASSANADU POST, PIN 689 512.

R1 BY ADV. SRI.K.R.RADHAKRISHNAN NAIR

THIS TRANSFER PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 26-07-2016, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

Msd.

APPENDIX

PETITIONER(S)' ANNEXURES :

- ANNEXURE 1:** COPY OF THE PETITION O.P.NO.83/2011 ON THE FILE OF FAMILY COURT, THIRUVALLA.
- ANNEXURE 2:** COPY OF THE PETITION O.P.(H.M.A)NO.244/2010 ON THE FILE OF FAMILY COURT, THIRUVALLA.
- ANNEXURE 3:** COPY OF THE CERTIFICATE DATED 20.06.2003 ISSUED BY V.S.M. HOSPITAL, MAVELIKARA.
- ANNEXURE 4:** COPY OF THE CERTIFICATE DATED 15.10.2014 ISSUED BY CHRISTIAN MISSION HOSPITAL, PANDALAM.

RESPONDENT(S)' ANNEXURES :

NIL

//TRUE COPY//

P.S.TO JUDGE

Msd.

K. RAMAKRISHNAN, J.

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Tr.P.C.No.560 of 2014
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Dated this the 26th day of July, 2016.

O R D E R

This petition is filed by the petitioner/husband for transfer of OP(HMA)No.244/2010 and OP.No.83/2011 pending before the Family Court, Thiruvalla to the Family Court, Pathanamthitta under section 24 of the Code of Civil Procedure.

2. It is alleged in the petition that the petitioner and first respondent are husband and wife and their relationship strained and the petitioner filed OP(HMA)No.244/2010 and OP.No.83/2011 before the Family Court, Thiruvalla. OP.(HMA)No.244/2010 was filed for divorce and O.P.No.83/2011 was filed for declaration of right over the immovable property and recovery of money. At the time of filing of both the petitions, there was only one family court at Thiruvalla for the entire district of Pathanamthitta. So, he has no option to file the petition before the Family Court, Thiruvalla. Subsequently another family court was established in Pathanamthitta and the parties are residing in between Pathanamthitta and Thiruvalla and according to the petitioner, distance wise Pathanamthitta will be nearer to both the parties and if the case is transferred to Pathanamthitta court, no hardship will be caused to both the parties. So he prayed for allowing the petition and transfer these two cases to Family Court, Pathanamthitta.

3. Heard Sri.S.Vinod Bhat, learned counsel appearing for the petitioner and Sri. K.R. Radhakrishnan Nair, learned counsel appearing for the respondents. The second respondent though served did not appear.

4. Counsel for the petitioner submitted that the marriage was solemnized at Pathanamthitta and they last resided together at Pathanamthitta and the immovable property is also situated within the jurisdiction of Pathanamthitta family court. At the time when these petitions were filed, there was only one family court, that was at Thiruvalla. Only in the year 2012 another family court was established at Pathanamthitta and the cases filed on and after a particular date alone were transferred to that court. But these petitions were filed prior to the cut of date and so they were not transferred. No prejudice will be caused to the respondents if the case is transferred to Pathanamthitta family court.

5. On the other hand, learned counsel for the respondents submitted that the cases are of the year 2010 and 2011 and it is ripe for trial and it is at that stage in order to protract the proceedings that the present petition has been filed.

6. It is an admitted fact that the petitioner and the first respondent are husband and wife and they are living separately since 2010. A child was born to them in the wedlock and the child is living with the mother. Since their relationship strained

irretrievably, according to the petitioner, he filed OP(HMA) No.244/2010 before the Family Court, Thiruvalla which was the only family court then available in Pathanamthitta district for divorce and also filed OP.No.83/2011 for declaration of his right over the property scheduled to that petition. Both these cases were pending before the Family Court, Thiruvalla. In the year 2012, another family court was established in Pathanamthitta and certain cases which were filed after 2012 alone were transferred to that court. Since these cases are pending before the Family Court, Thiruvalla, even prior to that, these cases were not transferred. However, it is admitted by both the parties that parties are residing in a place which is in between Pathanamthitta and Thiruvalla and according to the petitioner, Pathanamthitta court is more closer than Thiruvalla court. According to the counsel for the respondents, it is in equal distance. Since cases were pending before the Family Court, Thiruvalla since 2010 and it is ripe for trial, it is not necessary to transfer those cases to Family Court, Pathanamthitta at the late stage of the proceedings. Since parties will have to travel even to reach Pathanamthitta, no prejudice will be caused to the petitioner if he comes to Thiruvalla to conduct the cases which were filed by him at Thiruvalla court and that they were pending before that court since 2010 onwards. So under such circumstances, there is some force in the submission made by the counsel for the

respondents that it is only an attempt on the part of the petitioner to protract the proceedings that the present petition has been filed that too after a petition for amendment was dismissed by the family court which was challenged by the petitioner by filing OP(FC) No.13/2014 which was also dismissed by a Division Bench of this Court as per order dated 2.7.2014. So considering the circumstances, I do not find any merit in the petition and the same is liable to be dismissed.

In the result, the petition is dismissed. Considering the fact that the cases were of the year 2010 and 2011, the Family Court, Thiruvalla is directed to expedite the trial of both these cases as expeditiously as possible, at any rate, within five months from the date of receipt of a copy of this order. Interim order granted by this court is hereby vacated.

Office is directed to communicate a copy of this order to the concerned court at the earliest by Fax.

Sd/-

K. RAMAKRISHNAN, JUDGE.

/true copy/

P.S to Judge

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