

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C. JAYACHANDRAN

THURSDAY, THE 14<sup>TH</sup> DAY OF DECEMBER 2023/23RD AGRAHAYANA,

1945

TR.P(C) NO.695 OF 2023

SEEKING A TRANSFER OP(DIV) 2740/2021 OF FAMILY COURT,

ERNAKULAM TO FAMILY COURT, ALUVA

PETITIONER/RESPONDENT:

JYOTHY ANTHRAPER, AGED 37 YEARS,  
D/O.KURIAN ANTHRAPER,  
PRESENTLY RESIDING IN THE ADDRESS XI/43,  
NEAR JYOTHI NIVAS PUBLIC SCHOOL,  
U.C.COLLEGE P.O, ALUVA,  
ERNAKULAM DISTRICT, PIN - 683102.

BY ADV. G.SREEKUMAR (CHELUR)

RESPONDENT/PETITIONER:

TOMY JOSEPH, AGED 43 YEARS,  
S/O.LATE JOSEPH JOHN,  
RESIDING IN THE ADDRESS SRAMPICAL HOUSE,  
KUVEMPUROAD, SHIMOGA,  
STATE OF KARNATAKA, PIN - 577201.

BY ADVS.  
BOBY MATHEW  
K.MEERA (K/587/1991)

THIS TRANSFER PETITION (CIVIL) HAVING COME UP FOR  
ADMISSION ON 14.12.2023, ALONG WITH Tr.P(C).710/2023, THE  
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C. JAYACHANDRAN

THURSDAY, THE 14<sup>TH</sup> DAY OF DECEMBER 2023/23RD AGRAHAYANA,  
1945

TR.P(C) NO.710 OF 2023

SEEKING A TRANSFER OP NO.2711/2019 OF FAMILY COURT,  
ERNAKULAM TO FAMILY COURT, ALUVA

PETITIONER/PETITIONER:

JYOTHY ANTHRAPER, AGED 37 YEARS,  
D/O.KURIAN ANTHRAPER,  
PRESENTLY RESIDING IN THE ADDRESS XI/43,  
NEAR JYOTHI NIVAS PUBLIC SCHOOL,  
U.C.COLLEGE P.O, ALUVA,  
ERNAKULAM DISTRICT, PIN - 683102.

BY ADV.G.SREEKUMAR (CHELUR)

RESPONDENT/RESPONDENT:

- 1 TOMY JOSEPH, AGED 43 YEARS,  
S/O.LATE JOSEPH JOHN,  
RESIDING IN THE ADDRESS SRAMPICAL HOUSE,  
KUVEMPURROAD, SHIMOGA,  
STATE OF KARNATAKA, PIN - 577201.
- 2 JOHNY JOSEPH, AGED 54 YEARS,  
S/O.LATE JOSEPH JOHN,  
RESIDING IN THE ADDRESS SRAMPICAL HOUSE,  
KUVEMPURROAD, SHIMOGA,  
STATE OF KARNATAKA, PIN - 577201.

THIS TRANSFER PETITION (CIVIL) HAVING COME UP FOR  
ADMISSION ON 14.12.2023, ALONG WITH Tr.P(C).695/2023, THE  
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

O R D E R

Dated, this the 14<sup>th</sup> day of December, 2023

These are petitions seeking transfer of O.P.(Div) No.2740/2021 and O.P.No.2711/2021, both pending before the Family Court, Ernakulam to the Family Court, Aluva. The petitioner would contend that the Original Petitions were filed before the Family Court, Ernakulam, for the reason that the Family Court, Aluva was not established at that time. Now, the Family Court having been established at Aluva and the petitioner being a resident of Aluva, it is only just and convenient that the matter be transferred to the Family Court, Aluva.

2. Learned counsel would rely upon the decisions of the Honourable Supreme Court in Sumita Singh v. Kumar Sanjay & another [(2001) 10 SCC 41], which specifies that the convenience of the wife

is a matter to be taken into account, while fixing the forum for adjudication of matrimonial disputes.

3. This application is seriously opposed by the learned counsel for the respondents, pointing out that the Original Petitions sought to be transferred have been consolidated by the Family Court, Ernakulam and trial has begun on the same. Proof affidavit has already been filed. A transfer at this juncture, is not going to be of any benefit/use, besides not being sanctioned by law.

4. Having heard the learned counsel appearing on both sides, this Court is not inclined to allow the instant Transfer Petitions. It is true that the convenience of the wife is surely a matter to be taken into account, while fixing the forum for adjudication of matrimonial disputes, as has been

held by the Honourable Supreme Court in a catena of decisions, including the one in Sumita Singh (supra). However, this Court notice a distinguishing feature in this case, that the trial has already begun. The two Original Petitions sought to be transferred have been consolidated by the Family Court, Ernakulam and proof affidavit in lieu of chief examination has already been filed. At this stage, a transfer of these two Original Petitions to the Family Court, Aluva, is not going to benefit any of the parties.

5. Even though the convenience of the petitioner /wife is espoused as a ground, the same cannot be recognised in the peculiar factual circumstance that the trial has already begun. If the instant transfer sought for is allowed, the already begun trial will be stalled and the matter will have to be listed again for trial by the Family Court,

Aluva, depending upon the workload and other matters, which are already listed for trail in that court.

In such circumstances, these transfer petitions fail and the same will stand dismissed.

Sd/-

C.JAYACHANDRAN, JUDGE

WW

**APPENDIX OF TR.P(C) 695/2023**

**PETITIONER'S ANNEXURES:**

- ANNEXURE A1            A TRUE COPY OF THE ORIGINAL PETITION  
FILED BEFORE THE FAMILY COURT,  
ERNAKULAM AS O P(D) NO. 2740 OF 2021  
FILED DATED 16.03.2020.
- ANNEXURE A2            A TRUE COPY OF THE OBJECTION WITH  
COUNTER CLAIM FILED BY THE PETITIONER  
HEREIN IN ANNEXURE-I FILED DATED  
06.07.2023.
- ANNEXURE A3            A TRUE COPY OF THE OBJECTION FILED TO  
THE COUNTER CLAIM AS PRODUCED AS  
ANNEXURE-II FILED DATED 30.09.2023.

**RESPONDENT'S ANNEXURES:**

- ANNEXURE R1 (A)        TRUE COPY OF THE JUDGMENT OF THE  
HON'BLE SUPREME COURT DATED 09/09/2021  
IN TRANSFER PETITION (CIVIL) NO: 874  
OF 2020.
- ANNEXURE R1 (B)        A TRUE COPY OF THE JUDGMENT DATED  
22/08/2022 PASSED BY THIS HON'BLE  
COURT IN OP (FC) 255 OF 2022.
- ANNEXURE R1 (C)        A TRUE COPY OF THE JUDGMENT DATED  
10.07.2023 IN OP (CRL) 532 OF 2022 OF  
THIS HONOURABLE COURT.
- ANNEXURE R1 (D)        A TRUE COPY OF THE JUDGMENT DATED  
13/09/2023 IN OP (CRL) 704 OF 2023 OF  
THIS HONOURABLE COURT.

**APPENDIX OF TR.P(C) 710/2023**

**PETITIONER'S ANNEXURES:**

- |            |   |
|------------|---|
| ANNEXURE 1 | A TRUE COPY OF THE ORIGINAL PETITION<br>FILED BEFORE THE FAMILY COURT,<br>ERNAKULAM AS O.P NO.2711 OF 2019 FILED<br>DATED 18.11.2019. |
| ANNEXURE 2 | A TRUE COPY OF THE OBJECTION WITH<br>COUNTER CLAIM FILED BY THE RESPONDENTS<br>HEREIN IN ANNEXURE-I FILED DATED<br>7.12.2022.         |
| ANNEXURE 3 | A TRUE COPY OF THE OBJECTION AND THE<br>REPLICATION FILED TO ANNEXURE-II FILED<br>DATED 21.3.2023.                                    |