

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE MRS. JUSTICE SHOBA ANNAMMA EAPEN

MONDAY, THE 20TH DAY OF FEBRUARY 2023 / 1ST PHALGUNA, 1944

TR.APPEAL(C) NO. 20 OF 2022

JUDGMENT IN Tr.P(C) 352/2022 OF HIGH COURT OF KERALA

APPELLANT/1ST RESPONDENT:

DANIEL RAJAN, AGED 41 YEARS, S/O. KURIAKOSE, KUNDATHIL HOUSE, CHENNITHALA KIZHAKKEVAZHI MURI, THRIPPERUMTHURA VILLAGE, MAVELIKARA REP BY HIS POWER OF ATTORNEY HOLDER RAJAN DANIEL, AGED 66 YEARS, S/O. DANIEL, KUNDATHIL HOUSE, CHENNITHALA KIZHAKKEVAZHI MURI, THRIPPERUMTHURA VILLAGE, MAVELIKARA

BY ADVS.
RINNY STEPHEN CHAMAPARAMPIL
ASHA ELIZABETH MATHEW

RESPONDENTS/PETITIONER & RESPONDENTS 1 & 2:

- 1 M.C.MATHEW., AGED 64 YEARS
S/O. CHACKO, MEMALA AALUNKAL HOUSE, PURAMATTAM PANCHAYAT, VENNikulAM, PATHANAMTHITTA DISTRICT 698 534
- 2 BABY MATHEW, AGED 60 YEARS
W/O. MATHEW MEMALA AALUNKAL HOUSE, PURAMATTAM PANCHAYAT, VENNikulAM, PATHANAMTHITTA DISTRICT 698 534
- 3 SARA MATHEW, AGED 34 YEARS
D/O. M.C. MATHEW, MEMALA AALUNKAL HOUSE, PURAMATTAM PANCHAYAT, VENNikulAM, PATHANAMTHITTA DISTRICT 698 534

BY ADVS.
ABRAHAM SAMSON
LOVELY SAMSON (K/86-A/1999)

THIS TRANSFER PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 20.02.2023, ALONG WITH Tr.P(C).802/2022, 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 MRS. JUSTICE SHOBA ANNAMMA EAPEN

MONDAY, THE 20TH DAY OF FEBRUARY 2023 / 1ST PHALGUNA, 1944

TR.P(C) NO. 802 OF 2022

OP(DIV) 831/2022 OF FAMILY COURT, MAVELIKKARA

PETITIONER/S:

JUNU SARA MATHEW, AGED 34 YEARS, D/O M.C.MATHEW & W/O DANIEL RAJAN, MEMALA AALUNKAL HOUSE, PURAMATTAM PANCHAYAT VENNIKKULAM, PATHANAMTHITTA DISTRICT. REP. BY POWER OF ATTORNEY HOLDER, M.C.MATHEW, AGED 64 YEARS, S/O CHACKO, MEMALA AALUNKAL HOUSE, PURAMATTAM PANCHAYAT VENNIKKULAM, PATHANAMTHITTA DISTRICT, PIN - 698534

BY ADVS.
ABRAHAM SAMSON
LOVELY SAMSON

RESPONDENT/S:

DANIEL RAJAN, AGED 41 YEARS, S/O KURIAKOSE, KANDATHIL HOUSE, CHENNITHALA KIZHAKKEVAZHI MURI, THRIPERUMTHARA VILLAGE, CHENNITHALA P.O, NOW EMPLOYED IN GULF REP BY HIS POWER OF ATTORNEY HOLDER, RAJAN DANIEL, AGED 66 YEARS, S/O DANIEL, KANDATHIL HOUSE, KIZHAKKEVAZHI MURI, THRIPERUMTHARA VILLAGE, CHENNITHALA P.O , ALLAPUZHA DISTRICT, 690105, PIN - 690105

BY ADV RINNY STEPHEN CHAMAPARAMPIL

THIS TRANSFER PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 20.02.2023, ALONG WITH Tr.Appeal(C).20/2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Tr.Appeal(C) No.20 of 2022 & Tr.P(C) No.802 of 2022

JUDGMENT

A. MUHAMED MUSTAQUE, J.

Tr.Appeal(C) No.20/2022 is filed by the 1st respondent in Tr.P(C) No.352/2022. The petitioner therein sought transfer of OP(G&W) No.830/2022 on the file of the Family Court, Mavelikkara to the Family Court, Thiruvalla. That transfer petition has been allowed. Thereafter, yet another transfer petition as Tr.P(C) No.802/2022 has been filed to transfer OP (Divorce) No.381/2022 pending between the parties before the Family Court, Mavelikkara, to the Family Court, Thiruvalla.

2. Hereinafter, the parties are referred to by name.

3. Sri.Daniel Rajan and Smt.Junu Sara Mathew

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married in accordance with christian rituals and in their wedlock, a boy child was born. The child is now aged seven years. Sri.Daniel Rajan and Smt.Junu Sara Mathew are employed in gulf countries. The child appears to have been with the parents of Sri.Daniel Rajan. When Smt.Junu Sara Mathew came down, she took the child. Thereafter, the child is residing with her parents.

4. According to Sri.Daniel Mathew and his parents, the child was studying in a school at Mavelikkara and Smt.Junu Sara Mathew took the child on 13.05.2022 when she came down for vacation. Sri.Daniel Mathew and his parents moved a custody petition as OP(GW) No.830/2022 before the Family Court, Mavelikkara. There was a direction to produce the child on 17.06.2022 before the Family Court, Mavelikkara. As seen from the proceedings, a transfer petition as Tr.P(C) No.352/2022 was

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filed before this Court by the father of Smt.Junu Sara Mathew to transfer OP(G&W) No.830/2022 from the Family Court, Mavelikkara to the Family Court, Thiruvalla, and this Court, on 15.06.2022, passed an interim order staying all further proceedings before the Family Court, Mavelikkara. According to Sri.Rinny Stephen Chamaparambil, learned counsel appearing for Sri.Daniel Rajan, the course adopted by the father of Smt.Junu Sara Mathew is to scuttle the interim order passed by the Family Court, Mavelikkara to produce the child before the court on 17.06.2022. It was further submitted that it is to avoid the jurisdiction of the Family Court, Mavelikkara, the transfer petition was filed and before Smt.Junu Sara Mathew took away the child on 13.05.2022, the child was ordinarily residing within the jurisdiction of the Family Court, Mavelikkara.

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5. The learned Single Judge, after hearing both sides, allowed the transfer petition filed by the father of Smt.Junu Sara Mathew. This is how Sri.Daniel Rajan, through his power of attorney holder (father), has approached this Court in appeal.
6. Sri.Daniel Rajan also filed a divorce petition as OP(Div) No.831/2022 before the Family Court, Mavelikkara. Therefore, Smt.Junu Sara Mathew has approached this Court to transfer the above case from the Family Court, Mavelikkara to the Family Court, Thiruvalla. Noting that the dispute is between same parties, we ordered to tag the above transfer petition along with the transfer appeal.
7. We have heard Sri.Rinny Stephen Chamaparampil, learned counsel for Sri.Daniel Rajan; and Sri.Abraham Samson, learned counsel for Smt.Junu Sara Mathew.

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8. Admittedly, Sri.Daniel Rajan and Smt.Junu Sara Mathew are in gulf countries. The child is now studying in a school at Thiruvalla. The distance between the Family Court, Mavelikkara and the Family Court, Thiruvalla is only around 20 km. The learned Single Judge ordered transfer of the case taking note of the convenience of both parties, including the welfare of the child. We do not find any justifiable reason to interfere with this matter inasmuch as that no prejudice will be caused to Sri.Daniel Rajan or his parents since the distance between the Family Court, Mavelikkara and the Family Court, Thiruvalla is only around 20 km.

9. In regard to the custody, it is for the Family Court to decide. Sri.Daniel Rajan can again approach this Court for transfer of the case to the Family Court, Thiruvalla, based on subsequent events. For the time being, taking

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note of the facts and circumstances, we are not interfering with the order of the learned Single Judge. For the same reason, we also allow the transfer petition filed by Smt.Junu Sara Mathew to transfer the divorce case from the Family Court, Mavelikkara to the Family Court, Thiruvalla.

Accordingly, we pass the following orders;

- a) Tr.Appeal(C) No.20/2022 is dismissed.
- b) Tr.P(C) No.802/2022 is allowed. OP(Div) No.831/2022 on the file of the Family Court, Mavelikkara is transferred to the Family Court, Thiruvalla.
- c) Both petitions, OP(G&W) No.830/2022 and OP(Div) No.831/2022, shall be tried together.
- d) The Family Court, Thiruvalla is directed to pass appropriate orders in regard to interim custody at the earliest.
- e) If Sri.Daniel Rajan is coming down to

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India, necessarily, urgent orders shall be
passed in the matter.

Sd/-

A. MUHAMED MUSTAQUE

JUDGE

Sd/-

SHOBA ANNAMMA EAPEN

JUDGE

bka/-

Tr.App.(C) No.20/2022 & Tr.P(C) No.802/2022

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APPENDIX OF TR.P(C) 802/2022

PETITIONER ANNEXURES

Annexure A1	TRUE COPY OF O.P. (DIV) . 831 /2022 FILED BY THE RESPONDENT DATED 30.5.2022 BEFORE THE FAMILY COURT, MAVELIKKARA.
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