

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

TUESDAY, THE 1ST DAY OF FEBRUARY 2022 / 12TH MAGHA, 1943

TR.P(C) NO. 580 OF 2021

AGAINST THE ORDER/JUDGMENT IN OP 699/2019, O.P.HMA 672/2019 AND O.P. HMA
700/2021 OF FAMILY COURT, PATHANAMTHITTA

PETITIONER:

SILPA SHAJI
AGED 27 YEARS
3RD FLOOR, GRACE APARTMENTS,
KUNNUPURAM, PADAMUGAL, VAZHAKALA,
ERNAKULAM, PIN-682 030.
BY ADV U.JAYAKRISHNAN

RESPONDENTS:

- 1 SATHEESH K.S.
AGED 36 YEARS
S/O SASIDHARAN, KAPPAYIL HOUSE, CHENGANNUR,
CHETHAKKAL P.O.PATHANAMTHITTA DISTRICT-689 677
- 2 K.R.SASIDHARAN,
AGED 72 YEARS
KAPPAYIL HOUSE, CHENGANNUR, CHETHAKKAL P.O.
PATHANAMTHITTA DISTRICT-689 677
- 3 RAMANI,
AGED 67 YEARS
KAPPAYIL HOUSE, CHENGANNUR, CHETHAKKAL P.O.
PATHANAMTHITTA DISTRICT-689 677
BY ADVS.
G.UNNIKRISHNAN FOR R1 TO R3
BOBBY U. NAIR FOR R1 TO R3

THIS TRANSFER PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
01.02.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

CR

ORDER

Dated this the 1st day of February, 2022

Petitioner/Shilpa Shaji, who is the wife of the first respondent in this petition, has filed this transfer petition under Section 24 of the Civil Procedure Code, seeking to transfer O.P.No.669/2019 and O.P.HMA No.672/2019 and O.P.HMA No.700/2021 pending before the Family Court, Pathanamthitta to Family Court, Ernakulam.

2. During the pendency of this transfer petition and after the appearance of the respondents, I.A.No.1/2022 was filed to incorporate prayer to transfer O.P.(G&W) 352/2020. Similarly, I.A.2/2022 also filed to allow transfer of O.P.(G&W) 352/2020 pending before the Family Court, Pathanamthitta to Family Court, Ernakulam. I.A.Nos.1/2022 and 2/2022 stand allowed.

3. Now, the question to be decided is whether O.P.No.669/2019 and O.P.HMA No.672/2019 and O.P.HMA No.700/2021 and O.P.(G&W) 352/2020 are liable to be transferred from Family Court, Pathanamthitta to Family Court, Ernakulam for the reasons stated by the petitioner.

4. Heard both sides in detail.

5. It is vehemently argued by the learned counsel for the petitioner that the marital relationship between the petitioner and the first respondent was strained due to unspeakable cruel treatment towards the petitioner by the first respondent and her mother for dowry. Accordingly, the petitioner left the house of the respondents on 17.10.2018 and they have been living separately at their respective residences. It is submitted by the learned counsel for the petitioner that at present the petitioner is residing in Ernakulam district. Therefore, taking note of the convenience of the petitioner, the above four cases required to be transferred from Family Court, Pathanamthitta to Family Court, Ernakulam. It is submitted further that the distance from Family Court, Pathanamthitta to the present place of residence of the petitioner is 120 km. Further, it is argued that the petitioner apprehends danger, if the cases are being tried before the Family Court, Pathanamthitta.

6. The learned counsel for the respondents zealously opposed this contention and highlighted the counter statement filed by the respondents in this case. Paragraph Nos.3 to 6 in the counter affidavit are extracted hereunder to see the contention

raised by the respondents.

“3. I submit that the averment of the petitioner in paragraph 4 of the transfer petition that she is residing in the address given in the transfer petition from February 2000 is false. O.P.669 of 2019 and O.P.(HMA) 672 of 2019 was filed by the petitioner before the Family Court, Pathanamthitta. Petitioner has admitted in the said original petitions that she is residing with her parents in the address given in the said original petitions which is at Madaman, Ranni. In both the original petitions I had entered appearance and the same is being prosecuted by me. In O.P.669 of 2019 there were two and in O.P.(HMA) 672 of 2019 there were three counselling spread over days. In none of the said counselling petitioner has pointed out that she was residing in Ernakulam. Petitioner was prosecuting the said original petitions before the Family Court, Pathanamthitta for the past two years even when she states that she was residing in Ernakulam since February 2000.

4. In July 2021, I had filed O.P.(HMA) 700 of 2021 before the Family Court Pathanamthitta seeking for divorce. In the said original petition also the address of the petitioner is in Madaman, Ranni and she has accepted the notice in the said address. That itself proves that the averment to the contrary in the transfer petition is false.

5. I submit that the petitioner is not residing in the address mentioned in the Transfer Petition filed before this Hon'ble Court. In the wedlock, my son Jagan Nath K.S. was born on 14.10.17. He is now 4 years old. Since the petitioner was not allowing me to see the child and since he was not being looked after well and since his residence in the house of the petitioner was not conducive for his well-being, I filed O.P.(G&W) 352 of 2020 for declaring me as the guardian of the minor child and for his custody. In the said guardian and ward petition, notice was purposely not being accepted by the petitioner. When I received notice in this Transfer Petition, my counsel appearing for me before the Family Court, sent notice through Court in the guardian and ward original petition, in the address shown in the Transfer Petition. The said notice sent by the court has been returned with the endorsement “not known”. This itself clearly proves that the fact that the address shown in the transfer petition is a fictitious address.

6. I deny the entire averments in paragraph 4 of the Transfer Petition. The said allegations have been denied by me and the true facts I have stated in the objections filed in the Original Petitions. The transfer petition filed by giving an address in Ernakulam is made with the sole intention of harassing me and my parents who are parties to the Original Petition. The mere mentioning of an address and stating that she is in search of a job in Ernakulam will not clothe the Family Court, Ernakulam with jurisdiction to try the Original Petitions. I submit that there is no bonafides in the action of the petitioner in seeking the transfer of the original petitions filed in Pathanamthitta.”

7. According to the learned counsel for the respondents, in order to drag the trial and disposal of the above cases pending from 2019 onwards, this transfer petition has been filed without bonafides and the petitioner has no residence at present in Ernakulam. It has been highlighted by the learned counsel for the respondents that when the counsel for the respondents issued a notice in the address of the petitioner shown in this transfer petition in Ernakulam, the same was returned with the endorsement “not known”. However, the said notice not produced before this Court.

8. While addressing the grievance of the petitioner, in the synopsis of the transfer petition, it has been narrated as under:

“The petitioner is living along with her 5 year old son in Ernakulam District. O.P.HMA No 672/2019 was filed for divorce

by the petitioner and the O.P HMA 700/2021 is filed for divorce by the Respondent. The petitioner is unemployed and has no means of income. The mother and the brother of the petitioner are not in a position to look after the petitioner and her son. The father of the petitioner is working abroad and there is no one to look after them in Pathanamthitta. The petitioner is staying with her son in the residence of her cousin sister in Ernakulam district for securing a job. from her mother and living separately even from her childhood. The distance between her residence and Family court Pathanamthitta is more than 120 KM. There is no means of income for the petitioner to travel such distance.”

9. Thus, it is an admitted fact that the petitioner has no job or income and she alleged to be residing at the house of her cousin sister for the time being. The same would go to show that the petitioner wants to transfer four cases pending before the Family Court, Pathanamthitta, inclusive of cases filed by her showing her permanent address at Pathanamthitta, after a period of three years merely on the ground that she is temporarily staying at his cousin’s house. I do not think mere temporary stay for some reasons cannot be the foundation for transferring matters pending before the competent jurisdiction filed by the petitioner, who is a permanent resident within the jurisdiction of the said court.

Thus, it appears that the transfer plea mooted by the petitioner merely on the ground that she is staying at the house of

her cousin, for the time being, cannot be justified. Therefore, the transfer petition fails and is accordingly dismissed.

**Sd/-
A.BADHARUDEEN
JUDGE**

nkr

APPENDIX OF TR.P(C) 580/2021

PETITIONER ANNEXURES

**Annexure A1 TRUE COPY OF THE PETITION IN OP NO 669/2019
BEFORE FAMILY COURT PATHANAMTHITTA**

**Annexure A2 TRUE COPY OF THE PETITION IN OP HMA
672/2019 BEFORE FAMILY COURT PATHANAMTHITTA**

**Annexure A3 TRUE COPY OF PETITION IN OP HMA 700/2021
BEFORE THE FAMILY COURT PATHANAMTHITTA**