

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

MONDAY, THE 23RD DAY OF NOVEMBER 2015/2ND AGRAHAYANA, 1937

Cr1.MC.No. 5221 of 2015 ()

AGAINST THE ORDER/JUDGMENT IN MC 161/2015 of FAMILY COURT,
TIRUR

PETITIONER(S)/COUNTER PETITIONER:

MADHAVANUNNI C.
S/O.LATE NARAYANAN NAIR, 20/1, 2ND CROSS STREET,
JAYARAM NAGAR, VILLUVAKKAM, KOLATHOOR P.O.,
CHENNAI-600 099.

BY ADVS.SRI.SAJAN VARGHEESE K.
SRI.LIJU. M.P

RESPONDENT(S)/PETITIONER/NON-PARTY:

1. CHAKKINGAL SEETHAKUTTY AMMA,
W/O.NARAYANAN NAIR, C/O.RUGMINI AMMA, ANUGRAHA,
THRIKKANDIYOOR AMSOM AND DESOM, TIRUR TALUK,
MALAPPURAM DISTRICT-676 101.

2. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM-682 031.

R1 BY ADV.SRI.JAMSHEED HAFIZ
R2 BY PUBLIC PROSECUTOR SMT. SEENA RAMAKRISHNAN

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
23-11-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

:2:

Cr1.MC.No. 5221 of 2015 ()

APPENDIX

PETITIONER(S) ' EXHIBITS
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ANNEXURE-A1. TRUE COPY OF THE PETITION IN MC NO.161/2015 ON THE FILE OF
THE FAMILY COURT, TIRUR.

RESPONDENT(S) ' EXHIBITS
-----: NIL

// True Copy//

P.A. to Judge

SS

K. RAMAKRISHNAN, J.

Crl. M.C. No.5221 of 2015

Dated this the 23rd day of November, 2015

ORDER

This is an application filed by the petitioner challenging the jurisdiction of the Family Court, Thirur, to entertain M.C.No.161/2015 pending before that court under Section 482 of the Code of Criminal Procedure.

2. It is alleged in the petition that, the petitioner is the respondent in Annexure-A1 proceedings, which was filed by the respondent herein as petitioner claiming enhancement of maintenance against the petitioner under Section 127 of the Code of Criminal Procedure. It is stated that, the petitioner is not residing within the jurisdiction of the Family Court, Thirur and for the purpose of filing an application, it has to be filed within the jurisdiction where the respondent is residing. So the petition is not maintainable before the Family Court, Thirur. Hence the petition.

3. Heard Sri.Liju M.P., counsel appearing for the petitioner and Adv.Sri.Jamsheed Hafis, counsel appearing for the first respondent and Smt.Seena Ramakrishnan, Public Prosecutor appearing for the 2nd respondent.

4. The counsel for the petitioner submitted that under Section 126 of the Code of Criminal Procedure, the petition can be filed only before the court within whose jurisdiction the counter petitioner is residing and not within the jurisdiction where the petitioner in the lower court is residing.

5. On the other hand, the counsel for the first respondent submitted that, earlier similar contention was raised when the petitioner filed a petition for maintenance against her children including the petitioner and in spite of remand made by this court to consider that question, that contention was given up and the trial was conducted and

maintenance was awarded against all the children including the petitioner. Now since the amount is not sufficient, she filed the petition for enhancement and she can only file the application before the court which passed the earlier order.

6. It is an admitted fact that the first respondent herein is the mother of the petitioner and it is also an admitted fact that earlier petitioner filed M.C.No.1209/2010 before the Family Court, Malappuram, seeking maintenance under Section 125 of the Code of Criminal Procedure against her children including the present petitioner, who was shown as 3rd counter petitioner in the case and similar contention was raised by all the children who were residing outside the jurisdiction of Malappuram court, in different places and the application was allowed by the Family Court directing the counter petitioner in that application to pay maintenance to the petitioner therein including taking cognizance of the case

was challenged by the counter petitioners in that case including the petitioner as R.P.(F.C.)No.79/2012 before this court and this court by order dated 11.08.2014 allowed the revision and the case was remanded to the court below for fresh disposal after giving opportunity to the parties regarding the capacity of the children to pay the maintenance. After remand the application was allowed and maintenance was re-fixed. That order was not challenged by the parties. Even at that time all the children were residing outside the jurisdiction of Malappuram Court. Now the first respondent had filed an application for enhancement of maintenance only against the petitioner who is one of the children of the first respondent. The application for enhancement can be filed only before the court which passed the original order of maintenance. Since the order of the Family Court in M.C.No.1209/2010 was not challenged later when maintenance was awarded by the magistrate

against all the children, this court feels that it is not possible for the petitioner to raise the question of jurisdiction at this stage when an application for enhancement has been filed, as he has already submitted to the jurisdiction of Family Court, within whose jurisdiction the petitioner was residing and suffered an order of maintenance passed in that proceedings. So under the circumstances, this court feels that there is no merit in the petition and the same is liable to be dismissed. The question as to whether the application for enhancement can be maintained only against one of the children and his capacity to pay or the change of circumstance warranting payment of enhanced maintenance etc., can be considered by the Family Court on the basis of evidence. Considering the fact that the first respondent is an old lady aged 95 years, court below is directed to expedite disposal of the case as expeditiously as possible at any rate within two months

from the date of receipt of this order.

With the above direction and observation, the petition is disposed of.

Office is directed to communicate this order to the concerned court, immediately.

Sd/-
K. Ramakrishnan, Judge

// True Copy//

P.A. to Judge

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