

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

THURSDAY, THE 19TH DAY OF NOVEMBER 2015/28TH KARTHIKA, 1937

OP(C).No. 2788 of 2015 (O)

I.A. NO.2350/2015 IN CMA. NO.35/2015 of PRL. SUB COURT, IRINJALAKUDA.
.....

PETITIONER(S):

- 1. JOSE, S/O. CHATHOLI VARKEY,
VETILAPPARA DESOM, ATHIRAPILLY VILLAGE,
CHALAKUDY TALUK.**
- 2. JOSHY,
S/O. CHATHOLI JOSE, VETILAPPARA DESOM,
ATHIRAPILLY VILLAGE, CHALAKUDY TALUK.**

BY ADV. SRI.T.N.MANOJ.

RESPONDENT(S):

- 1. PUSPA,
W/O. PANDARI MOHANAN, VETILAPPARA DESOM,
ATHIRAPILLY VILLAGE, CHALAKUDY TALUK-680 121.**
- 2. DILEEP,
S/O. PANDARI MOHANAN, VETILAPPARA DESOM,
ATHIRAPILLY VILLAGE, CHALAKUDY TALUK-680 121.**
- 3. SATHI,
W/O. PANDARI DILEEP, VETILAPPARA DESOM,
ATHIRAPILLY VILLAGE, CHALAKUDY-680 121.**

**THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 19-11-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

rs.

OP(C).No. 2788 of 2015 (O)

APPENDIX

PETITIONER'S EXHIBITS:-

- P1 : COPY OF THE MEMORANDUM OF APPEAL IN CMA. 35/2015 ON THE FILES OF THE ADDITIONAL SUB COURT, IRINJALAKUDA.
- P2 : COPY OF THE MEMORANDUM OF APPEAL IN CMA. 34/2015 ON THE FILES OF THE ADDITIONAL SUB COURT, IRINJALAKUDA.
- P3 : COPY OF THE PETITION IA NO.2350/2015 FILED IN CMA. 35/2015 BEFORE THE PRINCIPAL SUB COURT, IRINJALAKUDA.
- P4 : COPY OF THE ORDER IN IA. 2350/2015 IN CMA. 35/2015 BY THE PRINCIPAL SUB COURT, IRINJALAKUDA.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.S. TO JUDGE

rs.

K.ABRAHAM MATHEW J.

O.P.(C) No.2788 of 2015

Dated this the 19th day of November, 2015

JUDGMENT

Petitioners are the defendants in O.S.No.261 of 2015 on the file of Munsiff, Chalakudy. The respondent/plaintiff filed I.A.No.827 of 2015 for temporary prohibitory injunction and I.A.No.828 of 2015 for a temporary mandatory injunction. Both were allowed. Petitioners have filed C.M.A.No.34 of 2015 and 35 of 2015 challenging the said orders. One C.M.A is in Principal Sub Court and the other in Additional Sub Court, Irinjalakkuda. Petitioners filed Ext P3 application before the Principal Sub Judge requesting him to 'make over' C.M.A.No.34 of 2015 pending before him to Additional Sub Court so that both appeals might be heard by the same court. By Ext P4 order the learned Sub Judge has dismissed it. This is challenged.

2. Heard the learned counsel for the petitioners.

3. The prayer in the application amounted to a request for transfer of the proceedings from one court to another. The power to transfer proceedings is not available to a Sub Judge. Under Section 24

C.P.C only High Court and District Court have the power to order transfer of proceedings. Principal Sub Judge or Principal Munsiff cannot invoke Section 151 C.P.C to order transfer of proceedings. I have no doubt that the impugned order is correct.

4. But in the circumstances like the present one a principal sub judge is not helpless. When at a station there are more than one sub Judge and one of them is principal sub Judge and the other/s additional sub judge/s, the former may invoke the power conferred on him under Section 6(3) of the Kerala Civil Courts Act, which reads thus: "Subject to the general or special orders of the District Judge, the Principal Subordinate Judge or the Principal Munsiff may from time to time make such arrangements as he thinks fit for the distribution of the business of the Court among the various Judges or Munsiffs thereof".

5. The power to distribute proceedings shall not be confused with the power to order transfer which is available only under Section 24 C.P.C. There is no conflict between Section 24 of the Code and Section 6(3) of the Kerala Civil Courts Act. The former is the power exercised on the judicial side, and the latter on the administrative side, which is the essential difference between them.

6. Necessity of redistribution may arise in many situations, one of them being a situation where joint trial of proceedings is required. But when an order for redistribution is made, the principal judicial officer shall not order joint trial of the proceedings since it is the power to be exercised by the judicial officer before whom the two proceedings come up. Redistribution of proceedings shall not be ordered at the instance of the parties, but the judicial officer concerned. A party or the additional presiding officer may bring to the notice of the presiding officer the desirability of redistribution. But the order for distribution shall be in an independent proceedings to be taken on the administrative side. This is why the High Court has issued Circular No. 38 of 1970 on its administrative side giving guidelines how to exercise the power under Section 6(3) of the Civil Courts Act. It is in the absolute discretion of the principal presiding officer to decide which court shall try or hear the proceedings.

7. Though I am compelled to dismiss this O.P as the Principal Judge could not have allowed the petitioners' application to 'make over' the proceedings that too to a court of his choice I may add that

notwithstanding the non-maintainability of the application, the Principal Sub Judge may invoke the powers available to him under Section 6(3) of the Civil Courts Act provided the District Judge has not issued any general or special order in this behalf.

In the result, this O.P is dismissed.

**K.ABRAHAM MATHEW
JUDGE**

pm