

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN
&
THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

MONDAY, THE 23RD DAY OF MARCH 2015/2ND CHAITHRA, 1937

OP (FC).No. 62 of 2015 (R)

AGAINST THE ORDER/JUDGMENT IN OP 1409/2014 of FAMILY
COURT,THRISSUR

PETITIONER :-:

1. JANAKIAMMA, AGED 75 YEARS,
D/O.MADAVIAMMA, KUNJUPIDUKKAN HOUSE, ANJAMPEEDIKA P.O.,
KALLYSSERY, KANNUR.
2. SATHEESAN, AGED 46 YEARS,
S/O.JANAKIAMMA, KUNJUPIDUKKAN HOUSE, ANJAMPEEDIKA P.O.,
KALLYSSERY, KANNUR, NOW RESIDING AT 'MARVEL APOORVA',
J-2146, 2ND FLOOR, KALSATHAMMALKOIL STREET,
RAMAPURAM, CHENNAI – 89.
3. JAYACHANDRAN, AGED 45 YEARS,
KUNJUPIDUKKAN HOUSE, ANJAMPEEDIKA P.O., KALLYSSERY,
KANNUR, NOW RESIDING AT REGENT MANOR, 304,
HORAMAVU MAIN ROAD, BANGALORE – 43.

BY ADVS.SRI.C.HARIKUMAR
SRI.VIZZY GEORGE
SMT.C.B.ANUROOPA

RESPONDENT :

RENUKA SADHANANDAN, AGED 45 YEARS,
RRISHANASREE HOUSE, P.O.ANNALLUR, ANNAPARA DESAM,
THRISSUR – 680 307.

BY ADV. SRI.T.N.MANOJ

THIS OP (FAMILY COURT) HAVING BEEN FINALLY HEARD ON
23-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP (FC).No. 62 of 2015 (R)

APPENDIX

PETITIONERS' EXHIBITS :-

- EXHIBIT P1. A TRUE COPY OF THE LAWYER NOTICE DATED 08.04.2013
ISSUED BY THE RESPONDENT.
- EXHIBIT P2. A TRUE COPY OF THE LAWYER NOTICE DATED 08.07.2013
UNDER SECTION 138 OF THE NEGOTIABLE INSTRUMENTS ACT.
- EXHIBIT P3. A TRUE COPY OF THE PETITION IN O.P.NO.705 OF 2013 OF THE
FAMILY COURT, IRINJALAKUDA DATED 26.09.2013.
- EXHIBIT P4. A TRUE COPY OF THE ORDER IN TRANSFER PETITION (CIVIL)
NO.488 OF 2013 BEFORE THIS COURT DATED 12.08.2014.
- EXHIBIT P5. A COPY OF THE NOTICE ISSUED FROM THE FAMILY COURT,
THRISSUR DIRECTING APPEARANCE OF THE 1ST PETITIONER IN
O.P.NO.1409 OF 2014.

RESPONDENT'S EXHIBITS :- NIL.

True copy

P.A to Judge

P.N.RAVINDRAN & ANIL K.NARENDRA, JJ.

O.P.(F.C.)No.62 of 2015

Dated this the 23rd day of March, 2015

JUDGMENT

P.N.Ravindran, J.

The petitioners are respondents 1 to 3 in O.P.No.1409 of 2014 on the file of the Family Court, Thrissur. The sole respondent is the petitioner therein. O.P.No.1409 of 2014 was initially instituted in the Family Court, Irinjalakuda as O.P.No.705 of 2013. Besides the petitioners, two other persons, who are none other than the daughters-in-law of the first petitioner, were also joined as respondents in O.P.No.705 of 2013. The respondents in O.P.No.705 of 2013 jointly filed Transfer Petition (Civil) No.488 of 2013 in this Court praying for a transfer of the case to Family Court, Kannur. Taking note of the fact that only first petitioner (the first respondent therein) is residing at Kannur and the others are residing at Chennai and Malaysia, the fact that the respondent (the petitioner therein) is employed at Thrissur where she is residing and the further fact that she has to look after her child, O.P.No.705 of 2013 was transferred from Family Court, Irinjalakuda to Family Court, Thrissur, by order

passed on 12.8.2014. After transfer, it was renumbered as O.P.No.1409 of 2014. In this original petition filed under Article 227 of the Constitution of India the petitioners seek a declaration that the Family Court, Thrissur has no jurisdiction to proceed with O.P.No.1409 of 2014.

2. The substance of the contentions raised in the original petition is that, even if the averments in the original petition filed before the Family Court are taken as true, they would not attract the provisions of the Domestic Violence Act (the lawyer who drafted the original petition must have had in mind The Protection of Women from Domestic Violence Act, 2005). The petitioners have also contended that the subject matter of the petition does not come within the purview of section 7 of the Family Courts Act, 1984 and that the dispute is the one of a civil nature. It is contended that the attempt in instituting the petition in the Family Court is to evade payment of the court fee. In our opinion, the question whether the Family Court has jurisdiction to entertain the petition filed before it by the respondent, is a question which has to be raised at the earliest opportunity before the Family Court itself. The petitioners

have not so far filed a written statement in the Family Court raising such a contention. If, as contended by the petitioner, the Family Court has no jurisdiction to entertain the dispute now raised before it, it is for them to raise such a plea before the Family Court itself. This Court cannot examine the issue regarding the jurisdiction of the Family Court to entertain the petition filed by the respondent, exercising the power under Article 227 of the Constitution of India, without such an issue being raised before the Family Court. We therefore find no good grounds to entertain the original petition.

The original petition fails and it is accordingly dismissed with the observation that the dismissal of the original petition will not stand in the way of the petitioners from raising the question of jurisdiction of the Family Court to entertain O.P.No.1409 of 2014 before the Family Court, Thrissur.

P.N.RAVINDRAN, JUDGE

ANIL K.NARENDHRAN, JUDGE

skj