

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM
&
THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

THURSDAY, THE 21ST DAY OF MAY 2015/31ST VAISAKHA, 1937

OP (FC).No. 204 of 2015 (R)

AGAINST THE ORDER IN OP 1062/2014 of FAMILY COURT,THRISSUR

PETITIONER:

SREEJA SANKAR, AGED 32 YEARS,
D/O.SANKARANKUTTY K, MEENU BHAVBAN,
CHEERAKKUZHI HOUSE' THIRUVENKIDAM,
GURUVAYOOR.P.O., GURUVAYOOR VILLAGE,
CHAVAKKAD TALUK, THRISSUR DISTRICT.

BY ADV. SRI.DINESH R.SHENOY

RESPONDENT:

G.VISHNUPRASAD, AGED 40 YEARS,
S/O.RAMAMOORTHY GURURAJAN,
DOOR NO.5, 1ST STREET,
6 B COLONY, COIMBATORE,
TAMIL NADU-641 003.

THIS OP (FAMILY COURT) HAVING BEEN FINALLY HEARD ON
21-05-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXHIBIT.P1- TRUE PHOTOCOPY OF O.P.NO.1682/2013, FAMILY COURT, THRISSUR.

EXHIBIT.P2- TRUE PHOTOCOPY OF O.P.NO.1062/2014 FAMILY COURT, THRISSUR.

EXHIBIT.P3- TRUE PHOTOCOPY OF THE AGREEMENT ENTERED BETWEEN THE PARTIES IN OP NO.1062/2014 ON 25.11.2014.

EXHIBIT.P4- TRUE PHOTOCOPY OF THE ORDER IN GOP NO.1062/2014 DATED 7.1.2015 FAMILY COURT, THRISSUR.

EXHIBIT.P5- TRUE PHOTOCOPY OF IA NO.874/2015 IN OP NO.1062/2014, FAMILY COURT, THRISSUR.

EXHIBIT.P6- TRUE PHOTOCOPY OF THE OBJECTION DATED 09.3.2015 FILED IN I.A.NO.874/2015 IN OP NO.1062/2014, FAMILY COURT, THRISSUR.

EXHIBIT.P7- TRUE PHOTOCOPY OF I.A.NO.1036/2015 IN OP NO.1062/2014, FAMILY COURT, THRISSUR.

EXHIBIT.P8- TRUE PHOTOCOPY OF I.A.NO.1035/2015 IN OP NO.1062/2014, FAMILY COURT, THRISSUR.

EXHIBIT.P9- TRUE PHOTOCOPY OF THE JUDGMENT DATED 24.3.2015 IN OP(FC) NO.96/2015.

EXHIBIT.P10- TRUE PHOTOCOPY OF ORDER DATED 18.3.2015 IN IA.NO.874/2015 IN OP NO.1062/2014, FAMILY COURT, THRISSUR.

EXHIBIT.P11- TRUE PHOTOCOPY OF ORDER DATED 18.3.2015 IN IA NO.1067/2015 IN OP 1062/2014, FAMILY COURT, THRISSUR.

EXHIBIT.P12- TRUE PHOTOCOPY OF ORDER DATED 18.3.2015 IN IA NO.1064/2015 IN OP 1062/2014, FAMILY COURT, THRISSUR.

EXHIBIT.P13- TRUE PHOTOCOPY OF ORDER DATED 18.3.2015 IN IA NO.1051/2015 IN OP 1062/2014, FAMILY COURT, THRISSUR.

EXHIBIT.P14- TRUE PHOTOCOPY OF ORDER DATED 18.3.2015 IN IA NO.1036/2015 IN OP 1062/2014, FAMILY COURT, THRISSUR.

EXHIBIT.P15- TRUE PHOTOCOPY OF ORDER DATED 18.3.2015 IN IA NO.1035/2015 IN OP 1062/2014, FAMILY COURT, THRISSUR.

EXHIBIT.P16- TRUE PHOTOCOPY OF IA 1590/2015 IN OP NO.1062/2014, FAMILY COURT, THRISSUR.

EXHIBIT.P17- TRUE PHOTOCOPY OF THE STATEMENT DATED 27.4.2015 FILED BY
COUNSEL FOR THE PETITIONER IN OP 1062/2014, FAMILY COURT, THRISSUR.

EXHIBIT.P18- TRUE PHOTOCOPY OF ORDER DATED 2.5.2015 IN IA 1590/2015 IN
O.P.NO.1062/2014.

EXHIBIT.P19- TRUE PHOTOCOPY OF ORDER DATED 10.3.2015 IN IA NO.874/2015
IN GOP.NO.1062/2014, FAMILY COURT, THRISSUR.

RESPONDENTS' EXHIBITS: NIL

/TRUE COPY/

P.S. TO JUDGE

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C.K. ABDUL REHIM & K. RAMAKRISHNAN, JJ.

.....
O.P.(FC)No.204 of 2015
.....

Dated this the 21st day of May, 2015.

JUDGMENT

Ramakrishnan, J:

This original petition is filed by the petitioner, who is the respondent in Ext.P7 petition, challenging the order in Exts.P19, P15 and P14 and also with a prayer for transferring the case from family court, Thrissur to family court, Ernakulam under Article 227 of the Constitution of India.

2. It is alleged in the petition that the petitioner and the respondent are wife and husband and a child was born to them by name Madhav Vishnu. After some period, the relationship between them strained. They started living separately and a petition for divorce as O.P.No.1682/2013 was filed by the petitioner evidenced by Ext.P1. The respondent filed O.P.No.1062/2014 for custody of the child and that was compromised as per Ext.P3 compromise followed by Ext.P4 order. Since the petitioner herein did not comply with the directions, the respondent herein filed Ext.P5 petition for custody of the child as per Ext.P4 order and Ext.P6 objection

was filed by the petitioner herein and she also filed Ext.P7 petition for modification of the order in Ext.P4 and also filed Ext.P8 petition directing the respondent herein to appear for examination by a psychiatrist. Since the petitioner did not produce the child, Exts.P19 order was passed followed by Exts.P10 to P13. I.A.No.1036/2015 filed by the petitioner for sending the respondent for psychiatric opinion was dismissed by Ext.P15 order. Thereafter on the basis of Ext.P16 application filed by the respondent herein Ext.P18 subsequent order was passed. Ext.P7 application has not been considered by the court as it requires elaborate evidence. Dissatisfied with the same, the petitioner filed this original petition seeking the following reliefs:

- a. Setting aside Ext.P19 order dated 10.3.2015 passed by the Family court, Thrissur.
- b. Transferring the Original petition 1062/2014 and the connected OP.No.1682/2013 pending before the Family Court, Thrissur to the Family Court, Ernnakulam for trial and disposal as per law.
- c. Setting aside Exts.P14 and P15 orders passed in Ext.P7 and P8 applications by the Family Court, Thrissur and

d. Directing the Family Court, Ernakulam to take a fresh decision on Exts.P7 and P8 applications, untrammelled by the observations made by the Family Court, Thrissur in the said applications and in Ext.P19 order passed in I.A.874/2015 on its file.

e. Granting such other reliefs as are deemed fit and proper in the facts and the circumstances of the case.

3. Heard learned counsel for the petitioner, Sri. Dinesh. R. Shenoy and counsel for the respondent, Sri. Arun Kumar.

4. When the application came up for hearing today, counsel for the petitioner submitted that prayer (a) has become infructuous as custody of the child has been restored to the petitioner after the period is over. So there is no necessity to pass any order setting aside Ext.P19 order at present.

5. As regards the prayer for transfer is concerned, the apprehension of the petitioner was that since the presiding officer of the family court had passed so many orders against her, she apprehends that she will not get justice from that officer and as such it has to be transferred. It is opposed by the counsel for the respondent.

5. It may be mentioned here that observations made by

the family court judge on the application filed by the husband is only for the purpose of granting custody of the child in implementation of Ext.P4 order. When the petitioner did not produce the child, the court below had no other option to get the order implemented and provide custody of the child as ordered in Ext.P4. So that cannot be taken as a ground to come to a conclusion that if Ext.P7 petition is allowed to be continued in that court, the petitioner will not get justice from that court. The family court judge is expected to consider and dispose of all the applications on the basis of evidence to be adduced on the applications independently untrammelled by the observations in the interlocutory application that has been disposed of by the family court judge while granting interim custody to the respondent. So the petitioner is not entitled to get the relief of transfer as the apprehension appears to be without any basis at this stage.

6. As regards Ext.P15 order is concerned, the court below is directed to consider that application also along with Ext.P7 petition after taking evidence and if the court feels that further opinion is required in this regard, the court below is at liberty to take independent decision on that application. So we

are setting aside Ext.P15 order and disposing the petition as follows:

i. The family court is directed to consider and dispose of Ext.P8 petition afresh along with Ext.P7 application filed by the petitioner herein on the basis of the evidence to be adduced untrammelled by the observations made by the family court in the interlocutory applications as expeditiously as possible.

ii. In the meantime, the arrangement made as per Ext.P4 regarding the custody of the child has to continue and the petitioner is directed to co-operate and see that Ext.P4 order is complied till the disposal of Ext.P7 petition seeking modification of that order.

With the above directions and observations, this petition is disposed of.

Office is directed to communicate a copy of this judgment to the concerned court immediately

Sd/-
C.K. ABDUL REHIM, JUDGE.
Sd/-
K. RAMAKRISHNAN, JUDGE.

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/true copy/

P.S to Judge

