

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRA

FRIDAY, THE 30TH DAY OF OCTOBER 2015/8TH KARTHIKA, 1937

OP (FC).No. 338 of 2015 (R)

PETITIONER(S) :

AYISHA T.M, AGED 35 YEARS

D/O.MUHAMMED THENAMOOCHIKKAL (PUNNAKATTIL) PATHAMKULAM P.O
OTTAPALAM, PALAKKAD DISTRICT.

BY ADV. SRI.V.B.RAMANUNNI

RESPONDENT(S) :

SULAIMAN P.K, AGED 39 YEARS,

S/O.MOIDEEN MOLLA, PANDARAKOTTIL, PALAPPURAM 679 103.

R1 BY ADV. SRI.P.JAYARAM

THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION ON
30-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP (FC).No. 338 of 2015 (R)

APPENDIX

PETITIONER(S) ' EXHIBITS

EXHIBIT P1. COPY OF THE PETITION FILED BY THE RESPONDENT AS CMP 62/15
IN MC 201/13.

EXHIBIT P1. COPY OF THE COUNTER FILED BY THE PETITIONER IN CMP 68/15.
EXHIBIT P1. COPY OF THE ORDER DATED 2.3.15 IN CMP 68/15 IN MC 201/13.

RESPONDENT(S) ' EXHIBITS

EXHIBIT R1(a): COPY OF PETITION IN M.C.NO.201 of 2013, FAMILY COURT,
OTTAPALAM DATED SEPTEMBER, 2013.

EXHIBIT R1(b): COPY OF COUNTER STATEMENT IN M.C.NO.201 OF 2013,
FAMILY COURT, OTTAPALAM DATED 23.4.2014.

EXHIBIT R1(c): COPY OF PETITION IN O.P.NO.5 OF 2013, FAMILY COURT,
OTTAPALAM DATED 30.4.2013.

EXHIBIT R1(d): COPY OF COUNTER STATEMENT IN O.P.NO.5 OF 2013, FAMILY
COURT, OTTAPALAM DATED 4.9.2014.

/TRUE COPY/

PS TO JUDGE

**P.R.RAMACHANDRA MENON
&
ANIL K.NARENDRA, JJ.**

O.P(FC).No. 338 of 2015

Dated this the 30th October, 2015

JUDGMENT

Ramachandra Menon, J.

The challenge is against Exhibit P3 order passed by the Family Court, Ottapalam in C.M.P.No.68 of 2015 in M.C.No.201 of 2013, whereby a joint trial has been ordered in respect of the said M.C with O.P.5/2013 filed under Sections 7, 9, 25 and 26 of the Guardian & Wards Act.

2. Learned counsel for the petitioner submits that the finding of the Family Court that, as the matter is between the same parties, joint trial is possible, is wrong and misconceived. It is stated that the proceedings in respect of maintenance is of 'criminal' in nature in view of the law declared by the Full Bench of this Court in ***Peter v. Sara (2006(4) KLT 219 (FB))***. By virtue of the ruling rendered

by a Division Bench of this Court in ***Nisha Susan George v. Alexander Vadakkedam (2012(4) KLT 246)***, a case of Divorce under Section 10A of the Divorce Act is of civil in nature. This being the position, the procedure to be followed is different and as such, both the matters could not have been clubbed together ordering joint trial.

3. The learned counsel appearing for the respondent submits that, even though the proceedings are of different nature, power is vested with the Family Court to have joint trial in view of the ruling reported in ***Mukundan v. Katyusha (2013(2) KLT 981)***. It is seen that the Tribunal, by virtue of the scheme of the statute, is competent to adopt its own procedure in view of the mandate under Section 10(3) of the Family Courts Act. As it stands so, we do not find any reason to deviate from the view taken in ***2013(2) KLT 981 (cited supra)***.

In the above circumstances, the challenge raised against Exhibit P3 order, that too, at a belated stage (which was passed as early as on 2.3.2015) does not call

for any interference. The Original Petition fails and is dismissed accordingly.

P.R.RAMACHANRA MENON
JUDGE

ANIL K.NARENDRA
JUDGE

vgs30/10/15