

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM
&
THE HONOURABLE MRS. JUSTICE MARY JOSEPH**

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

OP (FC).No. 523 of 2015 (R)

**(ARISING FROM ORDER DATED 28-08-2014 IN EP 43/2014 IN OP 1164/2010 BEFORE
THE HON'BLE FAMILY COURT, KOTTAYAM AT ETTUMANOOR)**

PETITIONER/PETITIONER:

**MAREENA @ MARIAMMA,
PAIKAD HOUSE, KONIPPADU P.O.,
MELUKAVU VILLAGE, KOTTAYAM.**

**BY ADVS.SRI.A.N.RAJAN BABU
SMT.K.SUNITHA VINOD**

RESPONDENTS/RESPONDENTS:

- 1. JESTIN
S/O. MATHEW, VALIYAPAYIKKATTU HOUSE, ULLANADU P.O.
BHARANANGANAM VILLAGE, MEENACHIL TALUK, KOTTAYAM-678002.**
- 2. MATHEW
F/O. JESTIN, VALIYAPAYIKKATTU HOUSE, ULLANADU P.O.
BHARANANGANAM VILLAGE, MEENACHIL TALUK, KOTTAYAM-678002.**
- 3. GRACY MATHEW
M/O.JESTIN, VALIYAPAYIKKATTU HOUSE, ULLANADU P.O.
BHARANANGANAM VILLAGE, MENACHIL TALUK, KOTTAYAM-678002.**

**R1-R 3 BY ADVS. DR.SEBASTIAN CHAMPAPPILLY
SRI.GEORGE CLEETUS**

**THIS OP (FAMILY COURT) HAVING BEEN FINALLY HEARD ON 23-11-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

AMG

APPENDIX

PETITIONER'S EXHIBITS

- P1: TRUE COPY OF THE DECREE DATED 1/12/2012.**
- P2: TRUE COPY OF THE APPLICATION FILED IN E.P. 43/2014 IN OP.1164/2010
BEFORE THE HON'BLE FAMILY COURT, KOTTAYAM SITUATED AT
ETTUMANNOR.**
- P3: TRUE COPY OF THE ORDER DATED 28/8/2014 IN E.P 43/2014 IN O.P 1164/2010
BEFORE THE HON'BLE FAMILY COURT, KOTTAYAM SITUATED AT
ETTUMANNOR.**

RESPONDENTS' EXHIBITS

NIL

True copy

P.A. To Judge

AMG

**C.K. ABDUL REHIM, J.
&
MARY JOSEPH, J.**

O.P (FC) No. 523 OF 2015

DATED THIS THE 23rd DAY OF NOVEMBER, 2015

J U D G M E N T

C.K. Abdul Rehim, J:

Challenge in this original petition which is filed under Article 227 is against Ext.P3 order passed by the Family Court, Kottayam at Ettumanoor in EP No.43/2014 in OP No.1164/2010. The appellant herein sought for a transfer of the decree in OP No.1164/2010, on the basis that jurisdiction on the subject matter now stands conferred on the Family Court, Pala. But the execution petition was disallowed by the court below observing that a Mat. Appeal filed against the decree is pending disposal before this court. It is further observed that it has to be verified whether the execution of the decree has been stayed by this court. We are of the opinion that both the above said observations made for dismissal of the application is not legal and proper or justifiable. Merely because an appeal is

instituted against the decree, the Decree Holder is not prevented from executing the decree. Further, as long as no stay order from the appellate court is produced, the execution court is bound to proceed with further steps in the matter. Therefore the Family Court ought to have transferred the decree for execution, to the other court, unless and until any stay order is produced.

2. Therefore the above original petition is hereby allowed by quashing Ext.P3 order. The Family Court, Kottayam at Ettumanoor is directed to pass fresh orders in EP No.43/2014, considering the relief sought for with respect to transfer of the Decree, taking note of the observations contained herein above.

Sd/-

C.K. ABDUL REHIM, JUDGE.

Sd/-

MARY JOSEPH, JUDGE.

AMG

True copy

P.A. to Judge