

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 4TH DAY OF JUNE 2015/14TH JYAISHTA, 1937

OP (FC).No.596 of 2014 (R)

OP(G&W) NO.1214/2014 of FAMILY COURT,PATHANAMTHITTA.

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PETITIONER:

**STACY JOHN,AGED 35 YEARS,D/O.ELEYAMMA MOSBY,
1962,VIA FLORENCE ROAD,CHARLOTTESVILLE,
VIRGINIA,U.S.A-22911.**

**BY ADVS.SRI.V.SETHUNATH
SRI.V.R.MANORANJAN (MUVATTUPUZHA)**

RESPONDENTS:

**SHINOY JOHN,AGED 36 YEARS,S/O.T.C.JOHN,
THENGATHALIL HOUSE,MAZHUVELI P.O,
PATHANAMTHITTA DISTRICT,PIN-689507**

BY ADV.SRI.A.N.RAJAN BABU

**THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION
ON 04-06-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

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OP (FC).No.596 of 2014 (R)

APPENDIX

PETITIONER'S EXHIBITS:

- P1: THE TRUE COPY OF THE PETITION IN OP (G&W) NO.1214/2014 ON THE FILE OF THE FAMILY COURT, PATHANAMTHITTA.
- P2: THE TRUE COPY OF THE IA NO.1408/2014 IN OP (G&W) NO.1214/2014 ON THE FILE OF THE FAMILY COURT, PATHANAMTHITTA.
- P3: THE TRUE COPY OF THE IA NO.140/2014 IN OP (G&W) NO.1214/2014 ON THE FILE OF THE FAMILY COURT, PATHANAMTHITTA.
- P4: THE TRUE COPY OF THE VISA STAMPED ON THE PASSPORT OF THE PETITIONER.
- P5: THE TRUE PHOTOSTAT COPY OF THE RELEVANT PAGES OF THE PASSPORT OF THE MINOR BOYS.
- P6: THE TRUE COPIES OF THE COMMUNICATION FROM NOTIFICATION @ TRAVISAOUTSOURCING.COM TO THE PETITIONER.
- P7: THE TRUE COPIES OF THE RETURN TICKET ITENARY.
- P8: THE TRUE COPY OF THE MEDIATION AGREEMENT SIGNED AT THE MEDIATION CENTRE OF THIS COURT BETWEEN THE PETITIONER AND THE RESPONDENT.
- P9: THE TRUE COPY OF THE JUDGMENT OF THIS COURT IN WPCR 422 OF 2013.
- P10: THE TRUE COPY OF THE EMAILS SENT TO THE SUPERINTEND OF POLICE, PATHANAMTHITTA.
- P11: THE TRUE COPY OF THE OBJECTION WITHOUT ANNEXURE FILED BY THE U S COURT AT VIRGINIA.
- P12: THE TRUE COPIES OF THE CUSTODY ORDER PASSED BY THE VIRGINIA COURT.
- P13: THE TRUE COPY OF THE INTERIM ORDER PASSED IN WPC4 NO.476/2014 DTD 1/12/2014.
- P14: THE DOWNLOADED APPLICATIONS FROM THE WEBSITE OF THE UNION OF INDIA FOR APPLYING O C I CARDS.
- P15: TRUE COPY OF THE APPLICATION FOR ADMISSION SIGNED BY THE RESPONDENT.

RESPONDENT'S EXHIBITS:

NIL

//TRUE COPY//

P.S. TO JUDGE

**C.K. ABDUL REHIM, J.
&
K. RAMAKRISHNAN, J.**

O.P (FC) No. 596 OF 2014

DATED THIS THE 4th DAY OF JUNE, 2015

J U D G M E N T

K. Ramakrishnan, J:

This is an application filed by the petitioner who is a respondent in OP (G&W) 1214/20014 on the file of Family Court, Pathanamthitta to quash Ext.P1 proceedings invoking supervisory jurisdiction of this court under Article 227 of the Constitution of India.

2. The case before the Family Court was filed by the respondent herein as OP (G&W) 1214/2014 evidenced by Ext.P1 under the provisions of Guardian and Wards Act for declaring that the petitioner who is respondent herein as guardian of the minors Jeremy, Ethan and Abigail aged 9, 6 & 2½ years respectively who were born to the petitioner and the respondent in the wedlock between them. According to the petitioner the OP is not maintainable before the Family court in India and both the petitioner and

respondent were U.S. Citizens and child were born from there and all are having American Passport and they also acquired American citizenship. Further the Family Court there has already passed an order in respect of custody of the children and as such second application for the same purpose before Indian court is not maintainable is the contention raised by the petitioner in this petition. According to the petitioner the court below should not have entertained the petition itself and so he filed this petition seeking intervention of this court for quashing Ext.P1 proceedings pending before the court below as OP (G&W) 1214/20014

3. Heard the counsel for the petitioner and counsel for respondent.

4. The Family Court has already entertained the petition on the basis of allegations in the petition assuming that, that court has jurisdiction to entertain the petition. If that court has no jurisdiction either territorial or otherwise then the party who want to take up such defence has to

appear before that court and raise an objection and seek for a preliminary hearing on that aspect regarding maintainability of the petition before that court provided under Order XIV Rule 2 of Code of Civil Procedure. When such a remedy is available to the petitioner, without exhausting that remedy the petitioner is not entitled to come to this court that too invoking supervisory jurisdiction of this court under Article 227 of the Constitution of India to quash the proceedings. So the petitioner is at liberty to move the Family Court itself by filing a preliminary objection regarding the maintainability of the petition before that court and file an application to hear that question as a preliminary point and if such an application is filed, there is a duty cast on the Family Court to consider that as a preliminary point and pass appropriate orders in accordance with law. So with the above observation, we feel that the petition can be disposed of. Accordingly this petition is disposed of directing the petitioner to move before the Family Court to decide the question of

maintainability as a preliminary issue. If already the objection has been filed, then on filing an application by the petitioner regarding the maintainability to be decided as preliminary issue then the Family Court is directed to consider and pass orders in that application within one month from the date of filing of such objection after hearing both sides. Till then the presence of the parties need not be insisted by the court below.

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

Sd/-

C.K. ABDUL REHIM, JUDGE.

Sd/-

K. RAMAKRISHNAN, JUDGE.

AMG

True copy

P.A. to Judge