

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

TUESDAY, THE 13TH DAY OF JANUARY 2015/23RD POUSHA, 1936

Tr.P(C).No. 50 of 2014 ()

TRANSFER THE OS NO.617/2012 OF SUB COURT, PALAKKAD TO
FAMILY COURT, PALAKKAD ALONG WITH O.P. NO.1027/2012.

PETITIONERS:

- 1. M. MANOJ, S/O.KRISHNAVENI, AGED 41 YEARS,
MUDAPPALAVEEDU, MAPPAD,
KIZHAKKENCHERRY AMSOM, DESOM,
KIZHAKKENCHERRY POST, ALATHUR TALUK,
PALAKKAD DISTRICT, PIN -678 684,**
- 2. P.K MURALIDHARAN, S/O.MADHAVAN MENON,
AGED 41 YEARS, 'SWATHI, PUZHAKALIDOM,
VADAKKENCHERY POST, ALATHUR TALUK,
PALAKKAD DISTRICT, PIN- 678 683.**

BY ADV. SRI.RAJESH SIVARAMANKUTTY.

RESPONDENTS:

- 1. PREMA, W/O.MANOJ, AGED 39 YEARS,
CHOZHIYAKATTIL, MANGALAM AMSOM, DESOM,
ANJUMOORTHY POST, ALATHUR TALUK,
PALAKKAD DISTRICT, PIN -678 682.**
- 2. MANOJ, S/O.VISWANATHAN, AGED 40 YEARS,
KALLAYAKATTIL, MANGALAM AMSOM, DESOM,
ANJUMOORTHY POST, ALATHUR TALUK,
PALAKKAD DISTRICT, PIN -678 682.**

R1 BY ADV. SRI.V.A.JOHNSON (VARIKKAPPALLIL).

**THIS TRANSFER PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 13-01-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

rs.

APPENDIX

PETITIONER'S ANNEXURES:-

- | | |
|-------------------|---|
| ANNEXURE A | COPY OF THE PLAINT IN O.S. NO.617/2012 FILED BY THE PETITIONERS AGAINST THE RESPONDENTS IN THE SUB COURT, PALAKKAD. |
| ANNEXURE B | COPY OF THE WRITTEN STATEMENT FILED BY THE 1ST RESPONDENT IN O.S. NO.617/2012 BEFORE THE SUB COURT, PALAKKAD. |
| ANNEXURE C | COPY OF THE WRITTEN STATEMENT FILED BY THE 2ND RESPONDENT IN O.S. NO.617/2012 BEFORE THE SUB COURT, PALAKKAD. |
| ANNEXURE D | COPY OF THE PETITION NUMBERED AS O.P. NO.1027/2012 IN THE FAMILY COURT, PALAKKAD FILED BY 2ND RESPONDENT AGAINST 1ST RESPONDENT. |
| ANNEXURE E | COPY OF THE COUNTER STATEMENT FILED BY THE 1ST RESPONDENT IN O.P. NO.1027/2012 BEFORE THE FAMILY COURT, PALAKKAD. |

RESPONDENT'S ANNEXURES:- **NIL.**

//TRUE COPY//

P.A TO JUDGE

rs.

P.BHAVADASAN, J.

Transfer Petition (Civil) No.50 OF 2014

Dated this the 13th day of January, 2015.

O R D E R

This is a petition filed under Section 24 of the Code of Civil Procedure seeking to have O.S.No.617/2012 pending before the Sub Court, Palakkad transferred to Family Court, Palakkad to be tried along with O.P.No.1027/2012.

2. The facts absolutely necessary for the disposal of the petition are as follows:

The respondents before this Court entered into an agreement for sale with the petitioners undertaking to sell their property for a total consideration of Rs.74 lakhs and received Rs.10 lakhs as advance amount. Time for performance was on or before 14.08.2012. There were other usual conditions in the agreement for sale.

3. It is alleged in the plaint that the 1st respondent before this Court issued notice on 24.07.2012 stating that she is entitled to Rs.37 lakhs out of the sale consideration and the amount already paid was received only by the 2nd respondent. The

petitioners disputed the claim made by the respondents. Suit was laid for specific performance. The respondents entered appearance and the 1st respondent filed a written statement contending that Rs.30 lakhs was received by the 2nd respondent and the documents required for registration of sale deed were handed over to the petitioners by the 2nd respondent in the presence of witnesses to the sale agreement. It is also claimed that respondents 1 and 2 are in inimical terms and the former has filed M.C.No.173/2012 under the Domestic Violence Act against the latter and the suit itself is a collusive action between the 2nd respondent and the petitioners and therefore the petitioners are not entitled for the relief claimed by them. True copy of the written statement filed by the 1st respondent in O.S.No.617/2012 before the Sub Court, Palakkad is produced as Annexure B. 2nd respondent, on the other hand, filed a written statement admitting the agreement for sale and standing by the terms of sale agreement. The said written statement is produced as Annexure C.

4. While things stood so, 2nd respondent moved the Family Court, Palakkad in O.P.No.1027/2012 seeking a declaration that

he is the sole and absolute owner of the plaint schedule property. Copy of O.P.No.1027/2012 filed by the 2nd respondent against the 1st respondent is produced as Annexure D. In the said petition filed before the Family Court, Palakkad, 1st respondent had entered appearance and filed Annexure E counter statement.

5. The petitioners now point out that issues involved in the proceedings before the Family Court and the Civil Court are almost identical and the decision in one case may have bearing on the other proceedings. Learned counsel appearing for the petitioner relied on the decision in **Vasumathi vs. Valsan** (2011 (3) KLT 638) and contended that even assuming that the suit instituted for specific performance does not arise out of marital relationship, going by the principles laid down in the above decision, the suit needs to be transferred to Family Court, Palakkad.

6. It is difficult to accept the above contention. Section 7 of the Family Courts Act determines the jurisdiction of the Family Court. To be more precise, the explanation part of Section 7 of the Act determines the jurisdiction. A reading of various provisions of the Act would clearly show that the dispute that is

to be resolved by Family Court should arise out of marital relationship. In the decision relied on by the learned counsel for the petitioners, a property over which a charge was obtained for maintenance by the wife was sought to be transferred. It was in that context it was held that suit in respect of their property has to be tried by the Family Court where the dispute between the wife and the husband was pending consideration.

7. In the case on hand, even assuming that the Family Court independently decides the disputes between 1st and 2nd respondents, it cannot bind the petitioners. Assume for argument sake that there was no proceedings before the Family Court, if, in such a case, defendant in the written statement disputed the right of other to execute a deed, could it be said that that issue has to be resolved by Family Court. Obviously, not because the case does not arise out of marital relationship. A reading of the provisions of Family Courts Act leaves one in no doubt that Family Court is intended to deal with matters arising out of marital relationship and not to deal with a suit that may arise between strangers and parties to a marriage.

8. In the case on hand, it is significant to notice that the respondents before this Court do not dispute their signatures on the agreement for sale. The case of the 1st respondent seems to be that she has not received part of the sale consideration and it is in that context the 2nd respondent has approached the Family Court seeking a declaration that the property entirely belongs to him.

9. Even assuming that the Family Court holds in favour of the 2nd respondent, that can be no effect on the rights of the petitioners in the present suit namely, O.S.No.617/2012.

For the above reasons, this Court is of the opinion that it is not possible to transfer O.S.No.617/2012 from Sub Court, Palakkad to Family Court, Palakkad to be tried along with O.P.No.1027/2012.

This petition is without merits and it is accordingly dismissed.

Sd/-

**P.BHAVADASAN
JUDGE**

smp