

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN**

**FRIDAY, THE 4TH DAY OF DECEMBER 2015/13TH AGRAHAYANA, 1937**

**Tr.P(C).No. 710 of 2014 ()**

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OP 534/2014 of FAMILY COURT, PALA  
=====**

**PETITIONER/RESPONDENT:**

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NIMMY @ NIRMALA, AGED 30 YEARS  
D/O. MATHAI, MADATHIKANDATHIL HOUSE  
MUTHALKODAM P.O., THODUPUZZHA VILLAGE  
AND TALUK, IDUKKI DISTRICT.**

**BY ADVS.SRI.K.S.HARIHARAPUTHRAN  
SRI.M.D.SASIKUMARAN  
SRI.GEORGE MATHEW  
SRI.SUNIL KUMAR A.G  
SRI.DIPU JAMES**

**RESPONDENT/PETITIONER:**

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CHERISH @ CHERIAN, AGED 30 YEARS  
S/O. GEORGE, CHEMPAKAMATTATHIL HOUSE  
PALAKATTUMALA P.O., MEENACHIL TALUK, PALA  
KOTTAYAM DISTRICT-685575.**

**BY ADV. SRI.B.KRISHNA MANI**

**THIS TRANSFER PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 04-12-2015  
ALONG WITH TRANSFER PETITION (Crl) No.40/2015, THE COURT ON THE SAME DAY  
PASSED THE FOLLOWING:**

**Tr.P(C).No. 710 of 2014 ()**

**APPENDIX**

**PETITIONER'S EXHIBITS**

**ANNEXURE A1          COPY OF M.C.NO.36/2014 DATED 31.03.2014 OF THE FAMILY COURT, THODUPUZHA**

**ANNEXURE A2          COPY OF O.P.NO.534/2014 ATED 02.12.2014 OF THE FAMILY COURT, PALA**

**RESPONDENT'S EXHIBITS**

**NIL**

**// TRUE COPY //**

**P.A.TO JUDGE**

**SD**

**K. RAMAKRISHNAN, J.**

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**Tr.P.(C) No.710 of 2014**

**&**

**Tr.P.(Crl.) No.40 of 2015**  
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**Dated this the 4<sup>th</sup> day of December, 2015**

**ORDER**

Tr.P.(C).No.710/2014 was filed by the wife to transfer OP 534/2014 pending before Family Court, Pala to Family Court, Thodupuzha while Tr.P.(Crl). 40/2014 was filed by the husband to transfer M.C.No.36/2014 pending before Family Court, Thodupuzha to Family Court, Ernakulam.

2. The common allegation in both the cases was that the petitioners in both the cases are husband and wife as their marriage was solemnized in the year 2009 and twin male children were born to them in their wedlock. Due to some difference of opinion between them, they started residing separately. While so, wife filed M.C.No.36/2014 before Family Court, Thodupuzha claiming maintenance against the husband for herself and children under Section 125 of the Code of Criminal Procedure. While that case was pending, husband filed O.P.No.534/2014 before Family Court, Pala for restitution of

conjugal rights. When the wife received notice in the application, she filed Tr.P.(C).No.710/2014 before this Court to transfer O.P.No.534/2014 from Family Court, Pala to Family Court, Thodupuzha for joint trial with M.C.No.36/2014 pending before that court. In the meantime, it is seen from the averments in the Tr.P.(Crl.)No.40/2015 that the husband has filed another petition as O.P.No.100/2015 before Family Court, Pala for custody of the children and that was also pending before that court. The ground for transfer in the petition filed by the wife was that she is without any employment. She is depending on her parents for her livelihood and it is very difficult for her to travel with the children to Pala on each occasion. It is also averred in the petition that since she is finding it difficult to travel, the case filed by the husband, namely, O.P.No.534/2014 has to be transferred to Family Court, Thodupuzha. The ground alleged by the husband in his transfer petition was that his parents are aged and most of the time, they are living in Ernakulam; it is very difficult for them to travel and some witnesses from Bangalore will have to be examined for the purpose of proving the life of both while they were residing together at Bangalore. So the respective parties wanted the

cases to be transferred from the respective courts of their choice.

3. Heard the learned counsel for the husband Sri B.Krishna Mani and Sri George Mathew, counsel for the wife.

4. The counsel for the husband submitted that the main reason for transfer mentioned in the petition by the wife is that she is finding it difficult to travel with the children to Pala in fact her parents are wealthy and she is also having estate in Palakkad which can be seen from the documents produced alongwith Crl.M.A.No.11355/2015. Further, she did not want to get transfer O.P.No.100/2015 filed by the husband for custody of the children and it is avered in the affidavit filed along with Crl.M.A.11355/2015 that the custody O.P. was allowed and custody of the children were given to him and considering the subsequent events, the difficulty mentioned by the wife does not arise. Considering the financial position of her father, even if the case is transferred to Ernakulam, she can very well come and conduct the case and he did not ask for a transfer of O.P.534/2014 as the wife has already filed an application for transfer. While that transfer application being considered, this court can consider as to which court both these cases can be transferred.

5. On the other hand, the counsel for the wife submitted that those are all not matters for consideration in this case. The financial position of the father is not a criteria for deciding the liability of the husband to pay maintenance to the wife. She will be challenging the order passed by the Family Court, Pala regarding the custody of the children in appropriate proceedings. According to him, his client has not received any summons in that O.P. and all necessary steps to challenge that order will be taken by their client in accordance with law. It is also submitted by the learned counsel for the wife that though husband wanted M.C.No.36/2014 to be transferred to Ernakulam, he does not want to transfer any other cases filed by him in Family Court, Pala and he is even now conducting the case there without any difficulty.

6. Allegations and the counter allegations made by both the counsels regarding the merit of the case is not germane for the purpose of disposing the transfer petition. So this Court is not going to those aspects for the purpose of disposing the transfer petition.

7. For the purpose of convenience though two petitions have to be considered by this Court and to be disposed of a

common order, referring the status of the parties as husband and wife for convenience for the disposal of the cases. It is an admitted fact that the petitioners in both these cases are husband and wife. It is also an admitted fact that in the wedlock, twin male children were born to them and originally they were living together in Bangalore where the husband was employed at that time. Even now, he is continuing his employment there. It is also an admitted fact that due to some difference of opinion between them, they started residing separately and the wife is now residing with her parents in her parental home near Thodupuzha. She had filed M.C.No.36/2014 during March 2014 claiming maintenance for herself and children before the Family Court, Thodupuzha under Section 125 of the Code of Criminal Procedure and husband appeared and filed his objections there. It is also an admitted fact that it is thereafter that husband filed O.P.No.534/2014 for restitution of conjugal rights before Family Court, Pala on the ground that marriage has been solemnised there. When the wife received summons in that case, she came to this Court by filing Tr.P.(C).No.710/2014 for transfer of O.P. No.534/2014 from Family Court, Pala to Family Court, Thodupuzha to be tried alongwith M.C.No.36/20014 as common

evidence will be required for disposal of both the cases considering the nature of objection raised by the husband in her maintenance application. While these cases are pending, the husband again filed another petition as OP (G&W) 100/2015 before the Family Court, Pala seeking permanent custody of the children who are with the mother at that time.

8. Admittedly wife is now residing in Thodupuzha alongwith her parents in her parental home. Though the counsel for the husband submitted that she is an MSW graduate, and she can get an employment, admittedly she is without any employment now. It may be mentioned here that the husband is even now working in Bangalore. For the purpose of conducting case filed by him as well as by the wife, he will have to travel from Bangalore either to Pala or to Thodupuzha. So, as far as he is concerned, transfer of case from Pala to Thodupuzha is not going to make much difference. Further, merely because the parents of the husband are residing in Ernakulam or witnesses from Bangalore have to be summoned is not a ground for transferring the case pending before Family Court, Thodupuzha to Family Court, Ernakulam as requested for in the petition in Tr.P(Crl.) No.40/2015. Further, he never sought for any transfer

of any of the cases filed by him before Family Court, Pala on the ground of his inconvenience to conduct the case as mentioned in his petition for transfer to Family Court, Ernakulam. It is true that while considering the transfer petition filed by the wife, the question as to whether the cases will have to be transferred to the choice of the parties as claimed in the respective petitions or to a particular court which is convenient for the parties can be considered by the court. Merely because the wife had not contested O.P.No.100/2015 and an ex parte order has been obtained are not germane for the purpose of deciding these cases at present as that is not the subject matter of transfer in this case.

9. The fact that wife is residing with her parents and she is without any employment etc. will go to show that she will have to depend somebody for the purpose of either to go to Pala or coming to Ernakulam to conduct the cases. Considering the fact that Section 125 of the Criminal Procedure Code has been enacted to protect the weaker section and to avoid vagrancy of deserted wife, they are not expected to drive to the court of convenience of the husband to conduct the case. As the husband is not residing in Ernakulam but he is working in Bangalore,

conducting the case either at Pala or at Thodupuzha as far as he is concerned is not going to make much difference. Further, considering the fact that the grounds claimed in the restitution petition and in the maintenance case are co-related, it is always better that both the cases will have to be heard and disposed of by the same court. Since no cases are pending before Family Court, Ernakulam, it is better to transfer the case pending before Family Court, Pala to Family Court, Thodupuzha to be tried alongwith case pending before that court and that will be in the best interest of both parties as well. So considering the circumstances, the Tr.P.(Crl.) No.40/2015 is dismissed and the Tr.P.(C).710/2014 has to be allowed.

So Tr.P.(Crl.) No.40/2015 is dismissed and Tr.P.(C) No.710/2014 is allowed and O.P.No.534/2014 pending before the Family Court, Pala is withdrawn and transferred to Family Court, Thodupuzha to be tried alongwith M.C.No.36/2014 pending before that court. Parties are directed to bear their respective costs in both these petitions. Considering the fact that the M.C. is of the year 2014 and O.P.No.534/2014 pending before the Family Court, Pala is also in the year 2014, Family Court is directed to make all earnest attempt to dispose of both the cases

as expeditiously as possible, at any rate, within three months from the date of receipt of the records in O.P.No.534/2014 and on appearance of parties in that court. Both the parties are directed to appear before the Family Court, Thodupuzha on 05.01.2016. Family court, Pala is direct to transmit the records in O.P.No.534/2014 forthwith so as to reach the Family Court, Thodupuzha before the date fixed by this court for appearance of parties in that court.

Registry is directed to communicate this order to both the courts immediately.

JV

sd/-  
**K. RAMAKRISHNAN,**  
**JUDGE**