



Tr.Appeal(C) Nos.4 and 5 of 2024

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

&

THE HONOURABLE MR. JUSTICE HARISANKAR V. MENON

THURSDAY, THE 6TH DAY OF JUNE 2024 / 16TH JYAISHTA, 1946

TR.APPEAL(C) NO. 4 OF 2024

AGAINST THE ORDER DATED 01.04.2024 IN Tr.P(C) NO.132 OF
2024 OF HIGH COURT OF KERALA

APPELLANT :

ELDHO VARGHESE, AGED 35 YEARS,
S/O. VARGHESE, NEDIYANIKUZHIYIL HOUSE, KAKKAD
KARA, PIRAVOM VILLAGE, MUVATTUPUZHA, ERNAKULAM
REPRESENTED BY POWER OF ATTORNEY HOLDER VARGHESE,
AGED 64 YEARS, NEDIYANIKUZHIYIL HOUSE, KAKKAD
KARA, PIRAVOM VILLAGE, MUVATTUPUZHA TALUK,
ERNAKULAM, PIN - 686664.

BY ADV. AKHIL ALPHONSE G.

RESPONDENT :

LIYA JOSE, AGED 35 YEARS,
D/O. JOSE, KOORAN HOUSE, THONDIYIL POST,
KANNUR DISTRICT, KERALA, PIN - 670673.

BY ADVS.

P.JERIL BABU

SRINATH GIRISH(K/340/1994)

THIS TRANSFER APPEAL(CIVIL) HAVING COME UP FOR ADMISSION ON
06.06.2024, ALONG WITH Tr.Appeal(C).5/2024, THE COURT ON THE
SAME DAY DELIVERED THE FOLLOWING:



Tr.Appeal(C) Nos.4 and 5 of 2024

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

&

THE HONOURABLE MR. JUSTICE HARISANKAR V. MENON

THURSDAY, THE 6TH DAY OF JUNE 2024 / 16TH JYAISHTA, 1946

TR.APPEAL(C) NO. 5 OF 2024

AGAINST THE ORDER DATED 01.04.2024 IN Tr.P(C) NO.827 OF 2023

OF HIGH COURT OF KERALA

APPELLANT:

ELDHO VARGHESE, AGED 35 YEARS,
S/O. VARGHESE, NEDIYANIKUZHIYIL HOUSE, KAKKAD
KARA, PIRAVOM VILLAGE MUVATTUPUZHA, ERNAKULAM
REPRESENTED BY POWER OF ATTORNEY HOLDER VARGHESE,
AGED 64 YEARS, NEDIYANIKUZHIYIL HOUSE, KAKKAD
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P.JERIL BABU
SRINATH GIRISH(K/340/1994)

THIS TRANSFER APPEAL(CIVIL) HAVING COME UP FOR ADMISSION ON
06.06.2024, ALONG WITH Tr.Appeal(C).4/2024, THE COURT ON THE
SAME DAY DELIVERED THE FOLLOWING:



Tr.Appeal(C) Nos.4 and 5 of 2024

"CR"

JUDGMENT

[Tr.Appeal(C) Nos.4 and 5 of 2024]

Harisankar V. Menon, J.

Tr. Appeal (c) No.4 of 2024 is filed against the order dated 01.04.2024 in Tr. Petition(C) No.132 of 2024. Tr. Appeal No.5 of 2024 is filed against the order dated 01.04.2024 in Tr. Petition(C) No.827 of 2023 by a learned Single Judge of this Court.

2. The petitioner in Tr. Petition(C) No.132 of 2024 is the husband. The petitioner in Tr. Petition(C) No.827 of 2023 is the wife. The appellant (husband) and the respondent (wife) were married at Onakkoor, Muvattupuzha Taluk. It is alleged that they resided together at the residence of the husband within the jurisdiction of the Family Court, Muvattupuzha. Since their relationship was not cordial, the following petitions were presented:

- (i). O.P.No.859 of 2023 is filed by the husband (appellant herein) for divorce under the provisions of the Divorce Act, 1869 before the Family Court, Muvattupuzha.
- (ii).The wife filed O.P.No.902 of 2023 seeking divorce before the Family Court, Thalassery.



Tr.Appeal(C) Nos.4 and 5 of 2024

(iii).The wife filed O.P.No.913 of 2023 for past maintenance before the Family Court, Thalassery.

(iv). The wife filed O.P.No.914 of 2023 before the Family Court, Thalassery seeking the return of gold and money.

3. The wife filed Tr. Petition(C) No.827 of 2023 before this Court, praying for transfer of O.P.No.859 of 2023 filed by the husband before the Family Court, Muvattupuzha to the Family Court, Thalassery. The husband filed Tr. Petition (C) No.132 of 2024 praying for transfer of O.P.No.902 of 2023 filed by the wife before the Family Court, Thalassery to the Family Court, Muvattupuzha.

4. The learned Single Judge of this Court disposed of both transfer petitions filed by the husband and wife by a common judgment dated 01.04.2024. Transfer Petition No.132 of 2024 filed by the husband is dismissed. As regards the Tr. Petition No.827 of 2023 filed by the wife, taking note of the convenience of the wife, the same is allowed and O.P.No.859 of 2023, pending before the Family Court, Muvattupuzha, is withdrawn and transferred to the Family Court, Thalassery.

5. Aggrieved by the dismissal of Tr. Petition(C) No.132 of 2024, the husband has filed Tr. Appeal(C) No.4 of 2024 and as



Tr.Appeal(C) Nos.4 and 5 of 2024

against the judgment in Tr. Petition(C) No.827 of 2023, by which the prayer for transfer by the wife is allowed, Tr. Appeal(C) No.5 of 2024 is filed.

6. On 10.05.2024, both these appeals have been admitted, staying the operation of the judgment impugned. However, the Presiding Officer of the Family Court, Muvattupuzha, has reported by her letter dated 21.05.2024 that the files had already been transferred to the Family Court, Thalassery on 19.04.2024 itself, even before the order of stay is issued by this Court.

7. We have heard the learned counsel appearing for the appellant-husband and the learned counsel representing the respondent-wife.

8. The learned counsel for the appellant-husband mainly pointed out that the learned Single Judge is not justified in ordering the transfer from the Family Court, Muvattupuzha to the Family Court, Thalassery, without noticing that the Thalassery Court has no jurisdiction in the matter. For this proposition, he relied on the judgment of this Court in **Renny Elizaabeth Umman v. Amrutha Raj Baby [2023 (1) KHC 655]**. He also points out the provisions of the Divorce Act, 1869 (for short, the 'Act'), to contend that the Family Court, Thalassery, has no



Tr.Appeal(C) Nos.4 and 5 of 2024

jurisdiction in the matter.

9. The learned counsel for the respondent-wife has sought to justify the transfer ordered by pointing out the circumstances under which the transfer was sought for, as highlighted in the petition filed under Section 24 of the Code of Civil Procedure (for short, the 'Code').

10. We have considered the submissions made by either side as well as the connected records.

11. The main contention raised by the appellant is that the learned Single Judge ought to have noticed that the Family Court Thalassery, did not have jurisdiction to try the petition filed by the Husband. He referred to the provisions of Section 3(3) of the Act, in support of the above contention. Section 3(3) of the Act reads as follows:

“‘District Court’ means, in the case of any petition under this Act, the Court of the District Judge within the local limits of whose ordinary jurisdiction, (or of whose jurisdiction under this Act the marriage was solemnized or), the husband and wife reside or last resided together.”

Thus, according to the appellant, it is only before the court within whose local limits the marriage between the parties was solemnised or where the husband and wife reside or last resided



Tr.Appeal(C) Nos.4 and 5 of 2024

together, has the jurisdiction to consider the petition presented under the Act. He pointed out that the marriage between the parties were not within the jurisdiction of the Family Court, Thalassery. Similarly, there is no averment in any of the petitions presented by the wife before the Family Court, Thalassery, that the parties resided together within the jurisdiction of the said court. Instead, the only averment in the divorce petition presented by the wife is that she was residing permanently at her parental house which falls within the jurisdiction of the Family Court, Thalassery.

12. The learned counsel also referred to the judgment of the Division Bench of this court in **Renny Elizaabeth [2023 (1) KHC 655]**, wherein one among us [Anil K. Narendran, J.] was a party. The provisions of Section 3(3) of the Act are true, provided that a divorce petition has to be presented with reference to the place of marriage or the last residence of the husband and wife. However, this is only for the purpose of the institution of the suit. In the present case, the divorce petition filed by the husband is ordered to be transferred. Admittedly, the said petition is filed before the Family Court, Muvattupuzha, and the marriage between the parties as well as the last residence together were



Tr.Appeal(C) Nos.4 and 5 of 2024

within the jurisdiction of the said court. Therefore, the reliance placed under Section 3(3) of the Act by the counsel for the appellant with reference to the divorce petition presented by the husband, which is ordered to be transferred, is out of place. As regards the divorce petition presented by the wife, the same has not been ordered to be transferred. The petition for transfer presented by the husband is rejected.

13. The provisions under Section 24 of the Code, under which the transfer is sought for, read as follows:

“24. General power of transfer and withdrawal.

(1) On the application of any of the parties and after notice to the parties and after hearing such of them as desired to be heard, or of its own motion, without such notice, the High Court or the District Court may, at any stage;

(a) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any Court subordinate to it and competent to try or dispose of the same; or

(b) withdraw any suit, appeal or other proceeding pending in any Court subordinate to it; and

(i) try or dispose of the same; or

(ii) transfer the same for trial or disposal to any Court subordinate to it and competent to try or dispose of the same; or

(iii) re-transfer the same for trial or disposal to the Court from which it was withdrawn.”

Under Section 24 (1) of the Code, the High Court or District Court



Tr.Appeal(C) Nos.4 and 5 of 2024

may at any stage withdraw any suit, appeal or other proceeding pending in any court subordinate to it; and transfer the same for trial or disposal to any court subordinate to it and competent to try or dispose of the same. Thus when a suit is transferred from one court to another, this Court only needs to make sure that the court to which the suit is transferred is “competent to try” the same. Here, the term competence under Section 24 of the Code is with reference to the status of the court and not with reference to the territorial jurisdiction. Even the appellant does not have a case that the Family Court, Thalassery, is competent enough to try the divorce petition.

14. Section 7(1) of the Family Courts Act, 1984, reads as under:

7. **Jurisdiction.**— (1) Subject to the other provisions of this Act, a Family Court shall-

- (a) have and exercise all the jurisdiction exercisable by any District Court or any subordinate Civil Court under any law for the time being in force in respect of suits and proceedings of the nature referred to in the Explanation; and
- (b) be deemed, for the purposes of exercising such jurisdiction under such law, to be a District Court or, as the case may be, such subordinate Civil Court for the



Tr.Appeal(C) Nos.4 and 5 of 2024

area to which the jurisdiction of the Family Court extends. Explanation. The suits and proceedings referred to in this subsection are suits and proceedings of the following nature, namely:-

- (a) a suit or proceeding between the parties to a marriage for a decree of nullity of marriage (declaring the marriage to be null and void or, as the case may be, annulling the marriage) or restitution of conjugal rights or judicial separation or dissolution of marriage;
- (b) a suit or proceeding for a declaration as to the validity of a marriage or as to the matrimonial status of any person;
- (c) a suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them;
- (d) a suit or proceeding for an order or injunction in circumstances arising out of a marital relationship;
- (e) a suit or proceeding for a declaration as to the legitimacy of any person;
- (f) a suit or proceeding for maintenance;
- (g) a suit or proceeding in relation to the guardianship of the person or the custody of, or access to, any minor.

Under the above Section, a Family Court shall have all the powers with respect to a suit or proceedings between the parties to a marriage for a decree of nullity, which can be exercised by any District Court. Here, the petition for divorce presented by the husband is being transferred to the Family Court, Thalassery from the Family Court, Muvattupuzha, and the former court is



Tr.Appeal(C) Nos.4 and 5 of 2024

competent enough to try and dispose of the same.

15. The judgment relied on by the appellant in **Renny Elizaabeth Umman [2023 (1) KHC 655]**, is pertaining to a situation where the petition for divorce presented by the wife under the provisions of the Divorce Act was returned by the court finding that it has no jurisdiction to try the same, since there was no averment in the petition that the parties lived together within the limits of the said court. This Court considered the above issue in the light of the judgment of the learned Single Judge in **Denny Antony and Another v. Marykutty Abraham [2007 (1) KLT 776]**.

16. In **Denny Antony [2007 (1) KLT 776]**, the learned Single Judge of this Court held that the wife residing at Thiruvalla, can maintain a suit or proceedings against her husband for return of money paid to him at the time of marriage, before the Family Court at Thiruvalla, since she is residing within the territorial limits of that Family Court. However, in **Renny Elizaabeth Umman [2023 (1) KHC 655]**, it is found as under:

“15. The provisions under S.20 of the Code of Civil Procedure, 1908 governs the place of institution of such a suit or proceedings for recovery of money, which has to be instituted by the wife within the territorial limits of the



Tr.Appeal(C) Nos.4 and 5 of 2024

Family Court where her husband at the time of commencement of the suit or proceedings actually and voluntarily resides or the cause of action, wholly or in part, arises. Therefore, the proposition of law by the learned Single Judge in *Denny Antony*, 2007 (1) KLT 776 that, the wife can maintain a suit or proceedings for return of money paid to her husband at the time of marriage, before the Family Court within the territorial limits of which she is residing at the time of initiation of such suit or proceedings, is not the correct position of law, and the same is hereby overruled. Since S.20 of the Code of Civil Procedure governs the place of institution of such a suit or proceedings, it has to be instituted within the territorial limits of the Family Court where her husband at the time of commencement of the suit or proceedings actually and voluntarily resides or cause of action, wholly or in part, arises.”

Thus, the judgment in **Denny Antony [2007 (1) KLT 776]** only with reference to the “institution” of the suit by the wife is overruled, holding that it should be with reference to the territorial limits as prescribed.

17. However, in the present case as already found, the petition filed by the husband at Family Court, Muvattupuzha was one validly instituted. Such a petition, if found necessary can be transferred to another court, having competency to try the same.



Tr.Appeal(C) Nos.4 and 5 of 2024

18. We also notice Section 8 of the Divorce Act, which reads as under:

"8. Extraordinary jurisdiction of High Court.

The High Court may, whenever it thinks fit, remove and try and determine as a court of original jurisdiction any suit or proceeding instituted under this Act in the court of any District Judge within the limits of its jurisdiction under this Act.

Power to transfer suits:- The High Court may also withdraw any such suit or proceeding, and transfer it for trial or disposal to the court of any other such District Judge."

Thus, this Court is conferred with extraordinary jurisdiction to withdraw any suit or proceeding pending before one court and transfer the same for trial or disposal to another court.

19. Here, the learned Single Judge has noticed that the balance of convenience is in favour of the wife insofar as it is the admitted case that the wife is abroad and her parents are taking care of the minor daughter. We find no reason to interfere with the above findings rendered by the learned Single Judge. Therefore, Tr. Appeal (C) No.5 of 2024 is only to be dismissed.

20. Coming to Tr. Appeal(C) No.4 of 2024 filed by the husband against the judgment in Tr. Petition(C) No.132 of 2022, we notice that the prayer of the husband for transferring O.P.No.902 of 2023 from the Family Court, Thalassery to the



Tr.Appeal(C) Nos.4 and 5 of 2024

Family Court, Muvattupuzha is turned down by the learned Single Judge. As noticed earlier, the wife has presented three petitions, i.e., O.P.Nos.902, 913 and 914 of 2023 before the Family Court, Thalassery. All the three petitions required to be tried together in view of the averments contained in the respective petitions. In that view of the matter, the prayer of the husband to transfer one out of the above three petitions to the Family Court, Muvattupuzha, cannot be accepted. Therefore, the judgment of the learned Single Judge dismissing Tr. Petition(C) No.132 of 2024 is perfectly correct.

On the whole, we find no reason to interfere with the impugned orders of the learned Single Judge. Therefore, these Tr. Appeals (C) are dismissed.

Sd/-

ANIL K. NARENDRAN, JUDGE

Sd/-

HARISANKAR V. MENON, JUDGE

In