

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.S.DIAS

THURSDAY, THE 4TH DAY OF AUGUST 2022 / 13TH SRAVANA, 1944

TR.P(C) NO. 468 OF 2021

JUDGMENT OPGW 357/2019 OF FAMILY COURT, OTTAPPALAM

PETITIONER/S:

BINY KURIAKOSE
AGED 33 YEARS
D/O. KURIAKOSE, MATTATHIL HOUSE, THONDIYIL
P.O..PERAVOOR, KANNUR DISTRICT, REPRESENTED BY
HER POWER OF ATTORNEY HOLDER AND MOTHER JANCY
MATHEW AGED 64 YEARS, W/O. M.A KURIAKOSE,
MATTATHIL HOUSE, THONDIYIL P.O. PERAVOOR, KANNUR
DISTRICT

BY ADVS.
K.MOHANAKANNAN
H.PRAVEEN (KOTTARAKARA)

RESPONDENT/S:

JOSEPH SEBASTIAN AGED 34 YEARS,
S/O.V.J. SEBASTIAN, VADAKKEL HOUSE, CHANGALERI
P.O., MANNARKKAD TALUK, PALAKKAD DISTRICT-678762

THIS TRANSFER PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 04.08.2022, ALONG WITH Tr.P(C).305/2019,
431/2022, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.S.DIAS

THURSDAY, THE 4TH DAY OF AUGUST 2022 / 13TH SRAVANA, 1944

TR.P(C) NO. 305 OF 2019

ORDER/JUDGMENT GOP 304/2019 OF FAMILY COURT, THALASSERY

PETITIONER/S:

JOSEPH SEBASTIAN
AGED 34 YEARS
S/O.SEBASTIAN, VADAKKEL HOUSE, CHANGALERI.P.O,
MANNARKKAD, PALAKKAD DISTRICT.

BY ADV C.DHEERAJ RAJAN

RESPONDENT/S:

BINY KURIAKOSE
AGED 33 YEARS
D/O.KURIAKOSE, MATTATHIL HOSUE, THONDIYIL.P.O,
PERAVOOR KANNUR DISTRICT.

BY ADVS.
SRI.K.MOHANAKANNAN
SMT.T.V.NEEMA

THIS TRANSFER PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 04.08.2022, ALONG WITH Tr.P(C).468/2021 AND
CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.S.DIAS

THURSDAY, THE 4TH DAY OF AUGUST 2022 / 13TH SRAVANA, 1944

TR.P(C) NO. 431 OF 2022

JUDGMENT IN OP 508/2022 OF FAMILY COURT, THALASSERY

PETITIONER/S:

JOSEPH SEBASTIAN
AGED 37 YEARS
S/O SEBASTIAN V.J., VADAKKEL HOUSE, CHANGALERY
P.O., MANNARKKAD, PALAKKAD DISTRICT-678 582.

BY ADVS.
C.DHEERAJ RAJAN
ANAND KALYANAKRISHNAN

RESPONDENT/S:

BINY KURIAKOSE
AGED 36 YEARS, D/O KURIAKOSE, PERMANENTLY
RESIDING AT MATTATHIL HOUSE, THONDIYIL P.O.,
PERAVOOR (VIA), KANNUR DISTRICT- 670673,
REPRESENTED BY POWER OF ATTORNEY HOLDER MOTHER
JANCY MATHEW, W/O KURIAKOSE, AGED 66 YEARS,
MATTATHIL HOUSE, THONDIYIL P.O., PERAVOOR (VIA),
KANNUR DISTRICT-670673.

BY ADV K.MOHANAKANNAN

THIS TRANSFER PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 04.08.2022, ALONG WITH Tr.P(C).468/2021 AND
CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

ORDER

As these transfer petitions are between the husband and wife in connection with the disputes arising out of their marriage, they have been disposed of by this common order.

2. Tr.P(C) No.305/2019 is filed by the husband against the wife, to transfer O.P.No.304/2019 filed by the wife, from the Family Court, Thalasseri to the Family Court, Ottappalam; Tr.P(C) No.468/2021 is filed by the wife against the husband to transfer O.P. (G&W) No.357/2019, filed by the husband, from the Family Court, Ottappalam to the Family Court, Thalasseri and Tr.(PC) No.431/2022 is filed by the husband to transfer O.P.No.508/2022 filed by the wife from the Family Court, Thalassery to the Family Court, Ottappalam. The parties and the pleadings are, for the sake of convenience, referred to as in Tr.P(C)

No.431/2022, which is treated as the leading case and is the recent case.

3. The case of the petitioner-husband in brief in Tr.P(C) No.431/2022 is that the respondent is his wife. They were married on 16.04.2012. They have a daughter named Evangelin Joseph, who is now 9 years of age. The respondent has filed O.P.No.508/2022 against the petitioner, before the Family court, Thalassery, for a decree of divorce. The petitioner has filed O.P.No.357/2019 against the respondent, before the Family Court, Ottappalam, for an order for the permanent custody of their daughter. The respondent has filed O.P.No.304/2017 against the petitioner, before the Family Court, Thalassery, for an order for the permanent custody of the child. Then, the petitioner filed Tr.P(C) No.305/2019, to transfer O.P.No.304/2019 from the Family Court, Thalassery to

the Family Court, Ottappalam. Later, the respondent filed Tr.P(C) No.468/2021 to transfer O.P.No.357/2019 from the Family Court, Ottappalam to the Family Court, Thalassery. During the pendency of the above transfer petitions, the Family Court, Thalassery, passed an interim order directing the interim custody of the child to be given to the respondent. The petitioner challenged the said order before this Court in OP(FC) No.404/2019. The parties were referred to mediation and they entered into Annexure B agreement, whereby the interim custody of the child was given to the petitioner. The respondent is employed abroad. She visits India only on her annual leave. The parties have agreed that custody of the child be given to the respondent during the child's school holidays. After entering into Annexure B agreement, the respondent went abroad. She left

India in 2019 and returned only after three years. It is learnt that the respondent would return to New Zealand in August 2022. She is prosecuting all the proceedings through her power of attorney holder. Therefore, no inconvenience would be caused to the respondent, if O.P.Nos.304/2019 and 508/2022 are transferred from the Family Court, Thalassery to the Family Court, Ottappalam. Hence Tr.P(C) Nos.305/2019 and 431/2022 may be allowed.

4. The respondent-wife has filed Tr.P(C) No.468/2021 and a counter affidavit in Tr.P(C) No.431/2022, inter-alia, admitting that she is employed in New Zealand. She has returned to India on 07.06.2022 and filed O.P.No.508/2022 before the Family Court, Thalassery. The parties were referred for mediation and the respondent herself is prosecuting the proceedings. The sole intention of the

petitioner is to keep away the daughter from the respondent. It would be difficult for the respondent to travel all the way from Kannur to Ottappalam, if the proceedings are transferred. Therefore, Tr.P(C) Nos.305/2019 and 431/2022 may be dismissed and Tr.P(C) No.468/2021 may be allowed.

5. Heard; Sri. Dheeraj Rajan, the learned counsel appearing for the petitioner-husband and Sri.K.Mohanakannan, the learned counsel appearing for the respondent -wife.

6. The point is which of the transfer petitions are to be allowed.

7. Admittedly, the respondent-wife is employed in New Zealand. She has filed O.P.No.508/2022 before the Family Court, Thalassery and Tr.P(C) No.468/2021 before this Court through her power of attorney holder. It is evident from Annexure B proceeding that

the custody of the 9 year old daughter of the couple is given to the petitioner-husband. O.P.No.304/2019 and OP(G&W) No.357/2019 are filed by the wife and husband, respectively, for the custody of the child. The child is a permanent resident of Palakkad. As O.P. Nos.304/2019 and 357/2019 are filed under the Guardian and Wards Act, 1890, necessarily the child will have to be produced before the Court below, to comply with the direction regarding the interim custody orders agreed in Annexure B proceeding. Therefore, I am of the view that it is the convenience of the child that has to be given preference and weightage.

8. Moreover, since the respondent-wife is employed in New Zealand and going by the law laid down by this Court in ***Mini Antony vs. Savio Aruja*** [2022 (3) KHC 442], the inconvenience of the power of

attorney holder, cannot be taken as a ground to order transfer of a case. Hence, I am inclined to exercise the discretionary powers of this Court under Section 24 of the Code of Civil Procedure and allow Tr.P(C) Nos.305/2019 and 431/2022. Furthermore, if all the proceedings are tried by the same Court, it would save precious judicial time and avoid conflict of decisions. Nonetheless, the respondent -wife would be at liberty to move the Family Court, Ottapalam and seek for the dispensation of her personal appearance and also avail the video conferencing facility.

In the result, I pass the following orders:

- (i) Tr.P(C) No.305/2019 is allowed by ordering withdrawal of O.P.No.304/2019 from the Family Court, Thalassery and transferring it to the Family Court, Ottappalam.
- (ii) Tr.P(C) No.431/2022 is allowed by ordering

withdrawal of O.P.No.508/2022 from the Family Court, Thalassery and ordering it to be transferred to the Family Court, Ottappalam.

- (iii) Tr.P(C) No.468/2021 is dismissed.
- (iv) The parties would be at liberty to move the Family Court, Ottappalam and seek for the consolidation and joint trial of all the cases between them.
- (v) The respondent-wife would be at liberty to move the Family Court, Ottappalam and seek for dispensation of her personal appearance and to avail the video conferencing facility.
- (vi) The Registry shall forward a copy of this order to the Family Court, Thalassery with instructions to forthwith transmit the records in O.P.No.304/2019 and 508/2022 to the Family Court, Ottappalam.

- (vii) The Family Court, Ottappalam, shall immediately on receipt of the records in the above numbered cases, post the cases along with OP(G&W) No.357/2019.
- (viii) The interim custody arrangement agreed by the parties in Annexure B agreement shall continue to remain in force until it is modified or varied.

Sd/-
C.S.DIAS, JUDGE

rkc/04.08.22

APPENDIX OF TR.P(C) 305/2019

PETITIONER ANNEXURES

ANNEXURE A1	THE TRUE COPY OF THE CERTIFICATE SHOWING THE FACTUM OF STUDY OF THE DAUGHTER OF THE PETITIONER AT LKG AT ST.DOMINIC'S CONVENT ENGLISH MEDIUM SCHOOL, MANNARKAD.
ANNEXURE A2	THE TRUE COPY OF THE SUMMARY OF FACTS RECORDED BY THE NEW ZELAND POLICE DATED 23.03.2018
ANNEXURE A3	THE TRUE COPY OF THE BAIL ORDER EVIDENCING THE FACTUM OF BAIL GRANTED BY THE NEW ZELAND POLICE
ANNEXURE A4	THE TRUE COPY OF THE MEMORANDUM SUBMITTED BY THE PETITIONER BEFORE THE FAMILY COURT, CHRIST CHURCH.
ANNEXURE A5	THE TRUE COPY OF THE DOCUMENT EVIDENCING THE ARRIVAL-DEPARTURE STATUS OF THE MINOR CHILD GIVEN BY THE IMMIGRATION DEPARTMENT
ANNEXURE A6	THE TRUE COPY OF THE O.P.304/2019 FILED BY THE RESPONDENT HEREIN
ANNEXURE A7	THE TRUE COPY OF IA.639/2019 FILED BY THE PETITIONER BEFORE THE FAMILY COURT, THALASSERY.
ANNEXURE A8	THE TRUE COPY OF THE COUNTER AFFIDAVIT FILE BY THE RESPONDENT HEREIN
ANNEXURE A9	THE TRUE COPY OF THE ORDER DATED 25.05.2019 IN IA 639/2019 IN O.P.304/2019

- ANNEXURE A10 THE TRUE COPY OF THE OP.357/2019 FILED
BY THE PETITIONER HEREIN BEFORE THE
FAMILY COURT, OTTAPALAM
- ANNEXURE A11 THE TRUE COPY OF THE PASSPORT, AADHAR
CARD, BAPTISM CERTIFICATE MEDICAL
TREATMENT DOCUMENTS OF THE MINOR CHILD
- ANNEXURE A12 THE TRUE COPY OF THE APPLICATION FOR
ADMISSION AND THE FEE RECEIPT ISSUED BY
AT ST.DOMINIC'S CONVENT ENGLISH MEDIUM
SCHOOL, MANNARKKAD.

Tr.P(C)Nos.305/2019, 468 OF 2021 & 431/2022

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APPENDIX OF TR.P(C) 431/2022

PETITIONER ANNEXURES

Annexure A THE TRUE COPY OF OP NO. 508/2022
PENDING BEFORE THE FAMILY COURT,
THALASSERY.

Annexure B THE TRUE COPY OF THE MEDIATION
AGREEMENT DATED 02.09.2019.

Tr.P(C)Nos.305/2019, 468 OF 2021 & 431/2022

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APPENDIX OF TR.P(C) 468/2021

PETITIONER ANNEXURES

Annexure A1	TRUE COPY OF THE OP (G & W) 357/2019 OF FAMILY COURT, OTTAPPALAM
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