

(2012) 06 KL CK 0161

High Court Of Kerala

Case No: Un Number TP (C) No..... of 2012

Preeti Yohannan

APPELLANT

Vs

Abraham K. Mathen

RESPONDENT

Date of Decision: June 26, 2012

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 24

Citation: (2012) 3 ILR (Ker) 202 : (2012) 3 KLJ 187

Hon'ble Judges: V. Chitambaresh, J

Bench: Single Bench

Advocate: Philip T. Varghese, Sri Thomas T. Varghese and Smt. Achu Subha Abraham, for the Appellant;

Judgement

@JUDGMENTTAG-ORDER

Mr. Justice V. Chitambaresh

1. The Registry has noted a defect and has objected to the numbering of the Transfer Petition (Civil) filed u/s 24 of the Code of Civil Procedure, 1908. The objection is that separate petitions need to be filed to transfer independent proceedings pending in the court below. The petitioner seeks transfer of the following proceedings from the Family Court, Nedumangad to the Family Court, Thiruvananthapuram.

- (i) O.P. No. 630/2012 filed for dissolution of marriage.
- (ii) O.P. No. 488/2012 filed for declaration of guardianship.
- (iii) O.P. No. 527/2012 filed for recovery of money and articles.
- (iv) O.P. No. 636/2012 filed for custody of minor child.

The High Court Rules, 1971 (Kerala) of course do not specify as to whether separate petitions should be filed for transfer of independent proceedings. But we get the necessary cue from the Civil Rules of Practice (Kerala) though they are intended to regulate the procedure in the Subordinate Civil Court in the State. The relevant rule therein is as follows:

57.Application for transfer.-

(1)***

(2)***

(3) A separate application shall be presented in respect of each suit, appeal or other proceedings of which transfer is sought.

The power to transfer u/s 24 of the Code of Civil Procedure, 1908 is exercised not only by the District Court but also the High Court. It will be anomalous to permit a consolidated petition to be moved in the High Court when separate petitions are insisted in the District Court.

2. Instances are many where a consolidated petition for transfer is filed even though the parties are different in the proceedings merely because a few of them are common. Separate petitions for transfer of independent suit, appeal or proceeding is essential to adjudge the need set forth in the same. Different considerations prevail for transfer of independent proceedings even if they have a common nexus and the finding in one has a bearing in another. The contention that all procedure should be deemed to have been permitted unless prohibited in the High Court Rules, 1971 (Kerala) does not at all impress me. The objection raised by the Registry is sustained. The Registry shall return the Transfer Petition (Civil) to the petitioner for representation after appropriate correction.