

IN THE COURT OF THE JUDICIAL FIRST CLASS MAGISTRATE,
SASTHAMCOTTA

Present: Kumari Amritha. T, L.L.B, L.L.M, Judoical I Class Magistrate

Dated this the 3rd day of November 2017

C.M.P. 1096/17 in MC 20/17

- Petitioners : 1 Rasiya, aged 23 years, W/o Nisam,
Kottilayyath Veedu, Idavanasseri Muri,
Mynagappally Village.
- 2 Mohammad Mussamin, aged 4 ½ years,
S/o Nisam, -do- (Minor)
- (By Adv. S. Jalaludheen)
- Respondent : 1 Nisam, S/o Kunjumohammad,
Moossari Veetil Kizhakathil,
Kozhikkodu SVM P.O, Ianivelikkulangara.
- 2 Suhra Beevi, W/o Kunjumohammad,
-do-
- 3 Nafisath, W/o Rahim, Vengayilath Veedu,
Kallelibhagam P.O, Karunagappally Village.
- 4 Naseema, W/o Ashraf, Panakkettuvilayi,
Panappetti Muri, Kallelibhagam P.O,
Karunagappally Village.
- 5 Jamaludheen, S/o Mohammadkunju,
Aalurayyath Veedu, Mynagappally Muri,
Mynagappally Village.
- Order : Petition u/s 12 of Protection of Women from
Domestic Violence Act, 2005.

1. This CMP is filed by the 1st respondent for himself and for and on behalf of 2nd to 5th respondents. This CMP is filed for hearing the question of maintainability under S 27 of the Domestic Violence Act.
2. Following point arise for consideration:

Point No i: Whether the petition filed under S 12 of the DV Act is maintainable in this Court?

3. For the purpose of this CMP Exts A1 to A4 are marked from the side of the petitioner.
4. Point No i: According to the respondents the address shown for the petitioner is Kettiyalath veedu, Edavanasheri Muri, Mynagapally village and the same is false. The petitioner has never lived in the above address and she is presently living with her parents at Vadakumthala Kizhakum muri, Vadakumthala Village which is not within the jurisdiction of this Court but comes under the jurisdiction of Chavara. The respondents had issued notice to the petitioner for restitution of conjugal rights and also for the production of the child in OP 438/17 in the address, Vadakumthalla villag. The learned counsel for the petitioner rebutted the argument put forth by the respondents by stating that the son of the petitioner is studying in Mynagapally village and she is temporarily residing within the jurisdiction of this Court. According to the learned counsel for the petitioner from the five documents produced by the petitioner it is evident that the petitioner is residing within the jurisdiction of this Court. The Ext A1 Adhar card, A2 election id card, A3 certificate issued by the Muslim Jama-ath, Pallisserickal Sasthamcotta on 25-8-2017 would show the address of the petitioner is Edavanasheri muri Mynagapally village. Ext A4 certificate issued by the Vidyarambam Central school, Venga, Mynagapally, would show that the child of the petitioner has studied in the school during the academic period 2017 to 2018. The above documents sufficiently prove that the petitioner hails from the Mynagapally village, coming under the jurisdiction of this Court. The respondent could not refute the documents adduced by the petitioner. The mere reason that the petitioner received notice in another address in OP 438/17 is not a ground to reach a conclusion that the petitioner is currently not residing in the address shown in the petition that is Edavanasseri Muri, Mynagapally Village.

In Rabindra Nath Sahu and Another v. Susila Sashu 2016 CriLJ 4931 the Hon'ble Orissa High Court held that "A temporary residence is a temporary dwelling place of the aggrieved person who has for the time being decided to make that place as her home. An aggrieved person who has lost her matrimonial home due to domestic violence and was not even allowed to stay at her ancestral house or at her father's place for some reason or the other and is compelled to take residence, though temporarily, either with one of her relatives or with one of her friends at a place where the domestic violence was not committed can invoke the jurisdiction of the Magistrate within whose local limits such place of temporarily residence situates. Temporary residence includes a place where the aggrieved person was compelled to reside in view of the commission of domestic violence. She may not have decided to reside there permanently or for a considerable length of time but for the time being."

In the present case all the documents produced by the petitioner prima facie shows that the petitioner is a resident of Edavanasseri Muri Mynagapally Village, coming under the jurisdiction of this Court. The respondent could not prove otherwise. Hence point No i is answered in against the respondents.

5. In the result the petition under S 12 is maintainable in this Court. And the CMP is dismissed.

(Dictated to the confidential assistant, transcribed by her, corrected and pronounced by me in open court on this the 3rd day of November 2017.)

Sd/-
Judicial First class Magistrate

//True Copy//

Judicial First class Magistrate