



2024/KER/2785

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

&

THE HONOURABLE MR. JUSTICE C.PRATHEEP KUMAR

TUESDAY, THE 16<sup>TH</sup> DAY OF JANUARY 2024 / 26TH POUSHA, 1945

OP (FC) NO. 12 OF 2024

OPGW 951/2021 OF FAMILY COURT, MAVELIKKARA

**PETITIONER/PETITIONERS/RESPONDENTS**

- 1 RENNY ELIZABETH OOMMEN  
AGED 34 YEARS  
D/O. OOMMEN PAUL, KOTTUVILAYIL HOUSE, ERAMATHOOR  
P.O., MANNAR, THRIPPERUMTHURA VILLAGE,  
MAVELIKKARA TALUK, ALAPPUZHA DISTRICT., PIN -  
689622
  - 2 OOMMEN PAUL @ SHAJI PAUL  
AGED 65 YEARS  
S/O. T.K.PAUL, KOTTUVILAYIL HOUSE, ERAMATHOOR  
P.O., MANNAR, THRIPPERUMTHURA VILLAGE,  
MAVELIKKARA TALUK, ALAPPUZHA DISTRICT., PIN -  
689622
  - 3 MARIAMMA OOMMEN  
AGED 64 YEARS  
W/O. OOMMEN PAUL, KOTTUVILAYIL HOUSE, ERAMATHOOR  
P.O., MANNAR, THRIPPERUMTHURA VILLAGE,  
MAVELIKKARA TALUK, ALAPPUZHA DISTRICT., PIN -  
689622
- BY ADVS.  
JOHN K.GEORGE  
M.A.PRABHU

**RESPONDENT/RESPONDENTS/PETITIONERS**

- 1 AMRIT RAJ BABY  
AGED 40 YEARS, S/O. LATE RAJAN, B. VARGHESE,  
MELETHIL HOUSE, THATTAYIL P.O., ADOOR TALUK,  
PATHANAMTHITTA DISTRICT., PIN - 691525



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2 K.S. VIMALA  
AGED 67 YEARS, LATE RAJAN, B. VARGHESE, MELETHIL  
HOUSE, THATTAYIL P.O., ADOOR TALUK, PATHANAMTHITTA  
DISTRICT., PIN - 691525

AMRIT RAJ BABY - PARTY-IN-PERSON

**THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION  
ON 16.01.2024, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:**

**ANU SIVARAMAN & C.PRATHEEP KUMAR, JJ.**  
-----O.P.(FC).12 of 2024  
-----Dated : 16<sup>th</sup> January, 2024**JUDGMENT**C.Pratheep Kumar, J.

1. The petitioners herein are the respondents in OP(G&W) 951/2021 pending before the Family Court, Mavelikkara. The above OP was filed by the husband and mother-in-law of the 1<sup>st</sup> petitioner under Sections 7, 9, 10, 12 and 25 of the Guardian and Wards Act, 1890 claiming permanent custody of the minor girl child “Amira Elisuba Amrit” and a minor boy child “Asher Amrit”, for appointing the 1<sup>st</sup> respondent as the guardian of the person and property of the minor children etc. The 1<sup>st</sup> respondent is a practicing Advocate. The Family Court has appointed an Advocate Commissioner to record the evidence of the witnesses. The grievances of the petitioners is that recording evidence of witnesses through an Advocate Commissioner will be prejudicial to the interest of the petitioners as the 1<sup>st</sup> respondent is a practicing Advocate. The 1<sup>st</sup> respondent is a quarrelsome person who may threaten and attack the 1<sup>st</sup> petitioner during the process of giving evidence. He may also not give



proper answers during the cross-examination before the Advocate Commissioner. While enjoying the visitation right he had picked up quarrel with the petitioners on 7.1.2023, attacked them and Mavelikkara police have registered a crime under Sections 323, 325, 295(b), 341 and 506 IPC and final report was filed against the 1<sup>st</sup> respondent.

2. It was contended that though the petitioners have filed a review petition before the Family Court, it was dismissed as per order dated 24.7.2023. Aggrieved by the above order, the petitioners preferred OP(FC).514/2023 before this Court. As per Ext.P4 order, the petitioners were permitted to submit appropriate application before the Family Court for recalling the order whereby the Advocate Commissioner was appointed in accordance with law and also point out other factors which are causing apprehension. Accordingly, the petitioners have filed I.A.40/2023 to review the order dated 14.7.2023 raising their grievances and praying for adducing evidence before the Court itself. The respondents filed Ext.P6 counter against Ext.P5. After hearing both sides the Family Court dismissed the above application as per Ext.P7 order.
3. According to the learned counsel for the petitioners, since the 1<sup>st</sup> respondent is a practicing lawyer he may not give correct answers during cross-examination and he may intimidate and attack the 1<sup>st</sup> petitioner



during cross-examination before the Advocate Commissioner. Therefore, her limited prayer is to record evidence in the Court itself. At the time of arguments, the 1<sup>st</sup> respondent appeared in person and argued that the prayer in the OP cannot be allowed as the usual course of recording evidence is through Advocate Commissioner. The 1<sup>st</sup> respondent further contended that for the very same relief, the petitioners earlier filed I.A.30/2023, which was already disposed of. Therefore, it was argued that, the present application filed for the very same relief is not maintainable.

4. However, it is to be noted that in Ext.P4 order dated 17.10.2023, this Court has given liberty to the petitioners to submit appropriate application for recalling the order whereby the Advocate Commissioner was appointed and as such, the present review petition cannot be held to be unsustainable.
5. The apprehension of the petitioners is that since the 1<sup>st</sup> respondent is a practicing lawyer, he may not give correct answers during cross-examination and also that he may intimidate and attack the 1<sup>st</sup> petitioner during cross-examination before the Advocate Commissioner. She has already produced Ext.P3 wound certificate to substantiate her contention that on an earlier occasion during the pendency of this OP, she was



attacked by the 1<sup>st</sup> respondent and the Mavelikkara police registered a case in that respect. Therefore, her apprehension cannot be suspected as a malafide one.

6. The respondents will not be prejudiced in any manner, even if the evidence is recorded before the Court itself. Since the apprehension raised by the petitioners that they will not get a fair trial if the evidence is recorded by the Advocate Commissioner is a bonafide one, we hold that it is only just and proper to direct the Family Court to record the evidence in OP(G&W) 951/2021 in the Court itself.
7. In the result, this OP(FC) is allowed. Ext.P7 order dated 13.12.2023 is set aside. The Family Court, Mavelikkara is directed to conduct the examination of the 1<sup>st</sup> petitioner and 1<sup>st</sup> respondent in OP(G&W) 951/2021 before the Court itself.

Sd/-

**Anu Sivaraman, Judge**

Sd/-

**C.Pratheep Kumar, Judge**

**APPENDIX OF OP (FC) 12/2024**

## EXHIBITS

- Exhibit P1 A TRUE COPY OF THE ORIGINAL PETITION (GW)  
NO.951/2021 OF FAMILY COURT MAVELIKKARA
- Exhibit P2 TRUE COPY OF THE OBJECTION FILED BY THE  
PETITIONERS IN ORIGINAL PETITION (GW)  
NO.951/2021 OF FAMILY COURT MAVELIKKARA
- Exhibit P3 A TRUE COPY OF THE WOUND CERTIFICATE DATED  
07/01/2022 OF THE DISTRICT MEDICAL  
OFFICER, MAVELIKKARA
- Exhibit P4 A TRUE COPY OF THE JUDGMENT IN O.P.(FC)  
NO. 514/2023 DATED 17/10/2023 OF THIS  
HON'BLE COURT
- Exhibit P5 A TRUE COPY OF THE IA 40/2023 IN ORIGINAL  
PETITION (GW) NO.951/2021 OF FAMILY COURT  
MAVELIKKARA, DATED 15/11/2023
- Exhibit P6 TRUE COPY OF THE OBJECTION DATED  
28/11/2023 IN IA 40/2023 IN O P(GW)  
NO.951/2021 OF FAMILY COURT, MAVELIKKARA
- Exhibit P7 TRUE COPY OF THE ORDER DATED 14/12/2023 IN  
IA NO.40/2023 (REVIEW PETITION) IN O.P.  
(GW) 951/2021 OF FAMILY COURT, MAVELIKKARA