

GAHC010176752022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Tr.P.(C)/90/2022

SMITA SAHA
WIFE OF SRI TANUJ KUMAR SAHA,
DAUGHTER OF LATE HARADHAN SAHA,
PRESENTLY RESIDING IN HOUSE NO. 72, LALA NIWAS, OPPOSITE MAA
APARTMENT, GMCH ROAD, P.O.- CHRISTIAN BASTI, P.S.- BHANGAGARH,
GUWAHATI- 781005, DISTRICT- KAMRUP(METRO), ASSAM.
PERMANENT RESIDENT OF NEAR N.F. RAILWAY GATE, KALIBARI,
NAKHULA GRANT, JAGIROAD, MOUZA- GOBHA, P.O. AND P.S.- JAGIROAD,
DISTRICT- MORIGAON, PIN- 782410, ASSAM.

VERSUS

TANUJ KUMAR SAHA
SON OF LATE GANESH CH. SAHA,
RESIDENT OF R.K. ROAD, NAGAON TOWN, P.O.- NAGAON, P.S.- NAGAON
SADAR,
DISTRICT- NAGAON, ASSAM, PIN- 782001.

Advocate for the Petitioner : MS. S KANUNGOE

Advocate for the Respondent : MR. Z HAMMAD

BEFORE
THE HON'BLE MR JUSTICE ARUN DEV CHOUDHURY
ORDER

02. 05. 2023

Heard Ms. S Kanungoe, learned counsel for the petitioner. Also heard Mr. Z Hammad, learned counsel for the respondent.

2. The present application is filed by the petitioner wife under Section 24 of the CPC seeking transfer of Matrimonial (Divorce) Case No. 04/2021 from the court of learned District and Sessions Judge, Nagaon to the court of learned Principal Judge, Family Court, Kamrup (M) at Guwahati.
3. The respondent wife appeared in the proceeding and also filed written statement. The contention of the wife is that though she had filed written statement in the court, she is facing severe inconvenience in contesting the said case, as she is having a minor child aged about 4 years and having no financial support except to depend upon her parents.
4. It is her further case that in the meantime, she has preferred an application under Section 125 Cr.P.C. seeking maintenance from her husband as she is helpless and not being able to maintain herself and her child. Said case is registered as FC (Crl) Case No. 222/ 2022 pending for trial before the learned court of Principal Judge, Family Court, Kamrup at Guwahati. She further contends that in that case her husband has appeared, the counseling has completed and the matter is fixed for written statement of the husband.
5. Per contra, Mr. Hammad, learned counsel representing the respondent husband while seriously objecting the transfer petition submits that the

petitioner herself has shown her address in the petition to be permanent resident of Jagirod under Morigaon though she has stated to be presently residing at Guwahati. Therefore, she will not have any difficulty in contesting the case in Nagaon. He further contends that the present application is filed only to harass the respondent husband.

6. By now it is well settled that in a matrimonial transfer petition, for the purpose of transfer, basically the comparative conveniences and inconveniences of the parties are considered irrespective of whether it is husband or wife. There is no dispute that both the learned Principal Judge, Family Court, Kamrup (M) at Guwahati as well as Principal Judge, Family Court, Nagaon are having jurisdiction to entertain the suit in question. Therefore, this Court is to consider on the basis of material available on record and the pleadings made by the parties whether this is a fit case to be transferred as prayed by the petitioner wife.
7. From the pleadings it is established and also not denied that the child out of the wedlock, aged about 4 years, is staying with the petitioner wife at Guwahati and that the petitioner wife is having no independent income. The fact remains that the husband is contesting the connected maintenance proceeding initiated by the petitioner wife against the respondent husband which is pending adjudication at Guwahati and the husband is contesting the same after receipt of notice. Therefore, this Court is of the view that travelling from Guwahati to Nagaon along with the 4 years child on each and every date of trial shall definitely be an inconvenience so far it relates to the petitioner wife as well as the same

will have an additional financial burden on her. At the same time, the husband is already appearing and contesting the FC (Crl) case No. 222/2022 before the learned Court of Principal Judge, Family Court, Kamrup at Guwahati.

8. Balancing the inconveniences, this Court is also of the view that it will be more difficult and inconvenient for the petitioner wife to contest the matrimonial case before the learned Court of Principal Judge, Family Court, at Nagaon and will have additional financial burden of travel. Accordingly, taking note of the matter in entirety, the present petition is allowed by transferring the case pending in the Court of learned District and Sessions Judge, Nagaon to the Court of learned Principal Judge, Family Court, Kamrup, Guwahati.
9. In view of the above, this transfer petition is allowed. The record of Matrimonial (Divorce) Case No. 04/2021 be transferred from the court of learned District and Sessions Judge, Nagaon to the court of learned Principal Judge, Family Court, Kamrup (M) at Guwahati.
10. Registry to communicate this order to the court of learned District and Sessions Judge, Nagaon as well as the court of learned Principal Judge, Family Court, Kamrup (M) at Guwahati.
11. Accordingly, this transfer petition is disposed of.

JUDGE

Comparing Assistant