

GAHC010164952022



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

Case No. : Tr.P.(C)./84/2022

RAJ BORUAH
S/O PRADIP KUMAR BARUAH,
PERMANENT RESIDENT OF ROHITESHWAR SAIKIA PATH, BALIGHAT,
SIMULGURI, DIST.- SIVASAGAR, ASSAM.
PRESENTLY RESIDING AT BLDG 1, DOCTOR RESIDENCE QUARTER,
TEZPUR UNIVERSITY ROAD, PARUWA CHARIALI, TEZPUR, ASSAM- 784001
AND IS PRESENTLY SERVING AS ADDITIONAL DEPUTY COMMISSIONER,
SONITPUR.

VERSUS

MRIDUSMITA BORAH
W/O RAJ BARUAH,
PERMANENT RESIDENT OF HOUSE NO. 10, JYOTI PATH, NEAR SUDARSAN
PUBLIC SCHOOL,
P.O.- KHANAPARA, GUWAHATI, DIST.- KAMRUP (M), ASSAM- 781022 AND
IS PRESENTLY SERVING UNDER SECRETARY TO THE GOVERNMENT OF
ASSAM, HANDLOOM, TEXTILE AND SERICULTURE DEPTT., DISPUR,
GUWAHATI- 781006.

Advocate for the Petitioner : MR. P K TIWARI

Advocate for the Respondent : R SARMAH

Linked Case : Tr.P.(C)./74/2021

RAJ BORUAH
S/O PRADIP KUMAR BARUAH
P/R/O ROHITESHWAR SAIKIA PATH
BALIGHAT
SIMULGURI
DIST-SIVSAGAR
ASSAM AND P/R/A C/O KAMAL THAKURIA
GROUND FLOOR
NEAR JANATA PRESS
P.O.-MIRZA
P.S.-PALASBARI
DIST- KAMRUP RURAL
ASSAM AND IS PRESENTLY SERVING AS CIRCLE OFFICER
BOKO

VERSUS

MRIDUSMITA BORAH
W/O RAJ BARUAH
P/R/O HOUSE NO. 10
JYOTI PATH
NEAR SUDARSAN PUBLIC SCHOOL
P.O.-KHANAPARA
GUWAHATI
DIST- KAMRUP (M)
ASSAM-781022 AND IS PRESENTLY SERVING UNDER SECRETARY TO THE
GOVERNMENT OF ASSAM
HANDLOOM
TEXTILE AND SERICULTURE DEPARTMENT
DISPUR
GUWAHATI-781006

Advocate for : MR. P K TIWARI
Advocate for : MR. A K TALUKDAR appearing for MRIDUSMITA BORAH

BEFORE
THE HON'BLE MR JUSTICE ARUN DEV CHOUDHURY
ORDER

20. 03. 2023

Heard Mr. H K Das, learned counsel for the petitioner. Also heard the

learned counsel for the respondent. These two Transfer Petitions are taken up together as the disputes are between same parties.

2. Before coming to the merit of these petitions, let the facts leading to filing of these two transfer petitions be summarised in the following manner:

(I) The petitioner and respondent got married on 29.01.2018 and they are having a son, which is presently aged about 4 years.

(II) Both the petitioner and respondent are civil servants under the State of Assam.

(III) TS (D) case No. 03/2021 was filed by the respondent wife for dissolution of the marriage by divorce. Such petition was filed before the learned District and Sessions Judge, Hojai. At that point of time, the respondent wife was serving as Circle Officer at Hojai.

(IV). Thereafter, the petitioner husband filed a suit for restitution of conjugal life before the learned District and Sessions Judge, Nagaon, which was registered as Matrimonial Suit (F) Case No. 32/2021. At that relevant point of time, the petitioner husband was posted at Nagaon.

(V). Thereafter, the respondent husband filed another application seeking custody of the child before the learned District and Sessions Judge, Nagaon on 09.04.2021, which was registered as Misc (J) Case No. 06/2021.

(VI). Thereafter, the Tr.P.(C) 74/2021 was preferred by the petitioner husband seeking transfer of the divorce suit filed by

the respondent wife along with custody application filed by the petitioner, which were pending before the learned District and Sessions Judge, Nagaon to the court of learned Principal Judge, Family Court, Kamrup (M) for disposal.

(VII). During the pendency of the aforesaid transfer petition, the respondent wife withdrew her suit pending before the learned District and Sessions Judge, Hojai and filed it afresh before the learned District and Sessions, Judge, Nagaon and all these petitions are now pending before the learned District and Sessions Judge, Nagaon for final disposal.

(VIII). Now the second transfer petition being Tr.P.(C) 84/2022 is filed for transfer of all the aforesaid applications including the subsequent suit filed by the respondent wife before the learned District and Sessions Judge, Nagaon to the court of learned Principal Judge, Family Court, Kamrup (M).

3. From the aforesaid, it is clear that so far relating to transfer of TS (D) 03/2021, the same has become infructuous inasmuch as the said suit has already been withdrawn by the respondent wife and she has already filed a divorce suit, which is pending before the learned District and Sessions Judge, Nagaon and transfer of such suit is sought in Tr.P. (C) 84/2022.

4. Mr. Das while seeking transfer submits that at present the respondent wife is posted at Guwahati and therefore it will be convenient for her to contest all the disputes at Guwahati inasmuch as the petitioner, who is presently posted at Tezpur shall also have a convenience to contest the suit at Guwahati as Guwahati is a place,

which is centrally located. It is the further contention of Mr. Das that the petitioner and respondent wife are civil servants and their jobs are transferable and during the pendency of the suit they have been transferred to different places. Therefore, if the litigations are transferred to a centrally located place i.e. Guwahati, both the parties shall have convenience, even if they are transferred and posted at another places.

5. Per contra, the learned counsel for the respondent submits that there is no dispute as regards nature of transferable jobs of the petitioner and the respondent, however, that cannot be a ground for transfer of proceeding inasmuch as if transfers are sought depending upon the transfer of the persons, the suit shall get delayed inasmuch as Nagaon is a centrally located place. In that view of the matter, the learned counsel for the respondent submits that she will have no inconveniences if the matters are tried at Nagaon inasmuch as the proceeding sought to be transferred have already proceeded to a certain extent. Therefore, if the transfers are allowed, it will cause delay and disputes should be settled at the earliest.

6. Considered the submissions advanced by the learned counsels for the parties. From the material available on record, it is clear that all the disputes between the husband and wife are pending before the learned District and Sessions Judge, Nagaon and same can simultaneously be tried by the said court. If the wife, who is presently posted at Guwahati is having no inconvenience, in the considered opinion of this court, the husband shall have also no

inconvenience in contesting the aforesaid disputes before the learned District and Sessions, Judge, Nagaon inasmuch as Tezpur where presently the petitioner is posted is nearer to Nagaon than Guwahati.

7. Therefore, in view of the aforesaid, this court finds that no case for transfer is made out. Accordingly, both these transfer petitions are dismissed.

JUDGE

Comparing Assistant