

GAHC010045612023



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

Case No. : Tr.P.(C)./19/2023

SMT. DIPALI DEB
W/O SRI BIJOY KUMAR PHUKAN, D/O LATE GOPAL DEB, R/O NEW
SONOWAL VILLAGE, P.O.-NAGA JANKA, P.S.-MARIANI, DIST-JORHAT,
ASSAM, PIN-785634

VERSUS

BIJOY KUMAR PHUKAN
S/O LATE PRAFULLA PHUKAN, R/O JAPARA GAON, P.O.-RAITING, P.S.-
DHEMAJI, DIST-DHEMAJI, ASSAM, PIN-787057

Advocate for the Petitioner : MR. P D NAIR

Advocate for the Respondent : MD S HOQUE

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

ORDER

15.03.2024

This is an application under Section 24 of the Civil Procedure Code, 1908 (for short, the Code) for transfer of Title Suit (D) No.03/2023 pending in the Court of

the learned District Judge, Dhemaji to the Court of the learned District Judge, Jorhat.

2. The case of the petitioner is that the petitioner and the respondent are both husband and wife and their marriage was solemnized at Jorhat. It is also submitted that after marriage, both the petitioner and the respondent being permanent residents within the district of Jorhat, resided together at Jorhat and out of the wedlock they have a daughter who is 20 years old, who is undergoing her studies at Jorhat. Later on due to certain matrimonial disputes, the respondent husband left the petitioner and the daughter and started living separately at Dhemaji.

3. This Court has also taken note of Section 19 of the Hindu Marriage Act, 1955 (for short, the Act of 1955) which stipulates where the petition under the said act is required to be presented. In terms of sub-clause (i) of the Section 19 of the Act of 1955, the jurisdiction would be at the place where the marriage was solemnized or (ii) the respondent, at the time of the presentation of the petition, resides, or (iii) the parties to the marriage last resided together, or (iiia) in case the wife is the petitioner, where she is residing on the date of presentation of the petition, or (iv) the petitioner is residing at the time of the presentation of the petition, in a case where the respondent is, at that time, residing outside the territories to which this Act extends, or has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of him if he were alive. Taking into account that an application has been filed by the husband seeking divorce, sub-clause (iii a) and (iv) of Section 19 would not apply.

4. From a perusal of the averments, it has been categorically mentioned that the marriage was solemnized at Jorhat. The petitioner presently resides at Jorhat since her marriage and the parties have also last resided only at Jorhat. In addition to that, this Court finds it relevant to take note of that the petitioner is a lady and has no source of independent income. On the other hand, the respondent herein is an employee of the Military Engineer Services under the Ministry of Defence, Government of India.

5. Under such circumstances, this Court transfers the Title Suit (D) No.03/2023 from the Court of the learned District Judge, Dhemaji to the Court of the learned District Judge, Jorhat.

6. The learned District Judge, Dhemaji is hereby directed to forthwith upon receipt of a copy of this instant order to transfer the case records of Title Suit (D) No.03/2023 to the Court of the learned District Judge, Jorhat.

7. The Registry is further directed to also intimate the Court of the learned District Judge, Dhemaji as well as the learned District Judge, Jorhat about the instant order.

8. Taking into account that both the parties are duly represented and the petitioner herein has not yet filed the written statement, the petitioner shall file her written statement on the next date fixed in the Court of the learned District Judge, Jorhat. Accordingly, this Court fixes the matter for appearance of both

the parties before the learned District Judge, Jorhat on 22.04.2024. The learned District Judge, Jorhat shall thereupon proceed with the disposal of the said proceedings in accordance with law.

9. With the above, the transfer petition stands disposed of.

10. Interim order passed earlier stands vacated.

JUDGE

Comparing Assistant