

GAHC010067982023



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

Case No. : Tr.P.(C)./31/2023

JHUMA KAIBARTA
W/O- SRI DADHICHI KAIBARTA, D/O- LATE ANANTA RANJAN DAS, R/O-
C/O- SMT. KALPANA DAS, KABUGANJ, P.O. KABUGANJ, P.S. DHOLAI, PIN-
788121, DIST. CACHAR, ASSAM

VERSUS

DADHICHI KAIBARTA
S/O- DAYACHARAN KAIBARTA, PERMANENT RESIDENT OF VILL. AND
P.O. BHUBANDAR, P.S. DHOLAI, PIN- 788121, DIST. CACHAR, ASSAM AND
PRESENTLY RESIDING AT QUARTER OF THE LABOUR WELFARE
ORGANIZER, ATHABARI COMMUNITY CENTRE FOR PLANTATION AND
LABOUR, P.O. DEMOW, DIST. SIVASAGAR, ASSAM, PIN- 785662.

For the petitioner (s) : Mr. U. Choudhury, Advocate

For the respondent (s) : Mr. R. De, Advocate

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH
O R D E R

10.05.2024

This is an application filed under Section 24 of the Code of Civil Procedure, 1908 for transfer of T.S.(M) No.140/2022 pending in the Court of the learned District Judge, Sivasagar to the Court of the learned

Principal Judge, Family Court, Cachar, Silchar.

2. Mr. U. Choudhury, the learned counsel appears on behalf of the petitioner. Mr. R. De, the learned counsel appears on behalf of the respondent.

3. The case of the petitioner herein is that the marriage was solemnized between the petitioner and the respondent on 16.09.1997 at Kabuganj in the district of Cachar, Assam. Thereafter, they resided together at the Government quarter at Dullabhchera, Karimganj wherein the respondent was posted as the Assistant Organiser in Labour Welfare, Govt. of Assam. Out of their wedlock, a girl child was born on 06.01.2007. On account of certain matrimonial disputes, it was alleged that the respondent drove the petitioner away from his house for which the petitioner took shelter at her parental house at Kabuganj with her daughter. It has also been mentioned that the petitioner had also filed an application under Section 145 of the Cr.P.C., 1973 in the Court of the learned Principal Judge, Family Court, Cachar, Silchar praying for maintenance which has been registered as F.C.(Crl.) Case No.121/2008. The said case was proceeded ex-parte against the respondent and vide an order dated 21.04.2009 maintenance was granted to the petitioner to the tune of Rs.2,000/- per month for maintenance of the petitioner and Rs.1,000/- for maintenance of the child. Thereupon, the petitioner as well as the respondent has been living separately. The T.S.(M) Case No.140/2022 was filed by the respondent seeking dissolution of marriage before the District Judge, Sivasagar.

4. It is the specific case of the petitioner that in terms with Section 19 of the Hindu Marriage Act, 1955, the jurisdiction lies in the Court under

whose jurisdiction the marriage was solemnized or the respondent at the time of presentation of the petition resides or the parties to the marriage last resided together. The exception to the above is that a wife can file a petition at a place where she was residing on the date of presentation of the petition. The learned counsel appearing on behalf of the petitioner therefore submits that as the marriage was solemnized in the district of Cachar, the petitioner who is the respondent in the said suit was a resident in the district of Cachar and both the parties reside together at Karimganj, the learned District Judge, Sivasagar did not have the jurisdiction to entertain the application filed for dissolution of the marriage in view of Section 19 of the said Act of 1955.

5. This Court has duly taken note of the pleadings in the instant petition and from the materials on record it is clear that the marriage between the petitioner and the respondent took place within the district of Cachar. Both the petitioner and the respondent last resided within the district of Karimganj and at the time of filing of the petition, the petitioner who is a resident in the said proceedings resided within the district of Cachar.

6. Accordingly, this Court finds it a fit case for exercising powers under Section 24 of the Code of Civil Procedure, 1908 for transfer of the proceedings being T.S.(M) Case No.140/2022 from the Court of the learned District Judge, Sivasagar to the Court of the learned Principal Judge, Family Court, Cachar, Silchar.

7. Taking into account that both the parties are represented in the instant proceedings, the parties are directed to appear before the learned Principal Judge, Family Court, Cachar, Silchar on 01.07.2024. On that date,

the petitioner herein is given the liberty to file her written statement on or before the next date fixed by this Court.

8. The Court of the District Judge, Sivasagar is directed to forthwith transfer the records to the Court of the learned Principal Judge, Family Court, Cachar, Silchar.

9. The Registry is further directed to intimate the Court of the District Judge, Sivasagar as well as the learned Principal Judge, Family Court, Cachar, Silchar about the instant order.

10. With the above observations, the instant petition stands allowed and disposed of.

11. The interim order passed on 31.03.2023 stands vacated.

JUDGE

Comparing Assistant