

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.11.2015

CORAM :

THE HONOURABLE MS. JUSTICE R.MALA

Tr.C.M.P.No.842 of 2014
and M.P.No.1 of 2014

K.Biraba

... Petitioner

Vs.

C.Harihara Subramaniam

... Respondent

Prayer:- Petition has been filed under Section 24 of C.P.C., praying to withdraw and transfer the G.W.O.P.No.443 of 2014 on the file of Family Court, Tirunelveli to any other court.

For Petitioner : Mr.R.Alvin Manoj Raj

For Respondent : Mr.M.Devaraj

O R D E R

Heard both sides.

2. The petitioner herein, who is the respondent in G.W.O.P.No.443 of 2014, has come forward with this petition seeking transfer of G.W.O.P.No.443 of 2014 pending on the file of Family Court, Tirunelveli to some other appropriate court, having jurisdiction to entertain the above application stating that she is the mother of the child/ward and both of them are residing at Chrompet, Chennai.

3. Resisting the contentions of the learned counsel appearing for the petitioner, learned counsel for the respondent submits that the respondent/husband filed G.W.O.P.No.443/2014 under the Guardians and Wards Act, 1890, for custody of the child, initially before the District Court, Tirunelveli, subsequently, after constitution of Family Court, the said case was transferred to Family Court, Tirunelveli and the same is pending since 2012 and till this date, the petitioner herein/wife kept quiet and now she has come forward with this petition seeking to transfer the said case from the Family Court, Tirunelveli to some other appropriate court.

4. The second limb of argument put forth by the learned counsel for the respondent is that the child was originally in the custody of the mother, but the child was in the care and custody of a servant maid, who left the child in Tirunelveli Bus Stand and the respondent/husband has taken custody of the

child with the assistance of Police and subsequently, the child was handed over to the mother. Stating so, the learned counsel for the respondent prayed for dismissal of the Tr.C.M.P.

5. I have considered the rival submissions made on both sides and perused the typed set of papers.

6. On a perusal of the typed set of papers, it is seen that there is a dispute between the spouses, in which, the child is the puppet in the hands of both spouses. It is further seen that once the child was in the custody of the mother, according to the father, the child was in care and custody of the servant maid, appointed by the mother, who left the child in Tirunelveli Bus stand and then the father secured the child with the assistance of Police and subsequently, the child was handed over to the mother.

7. The issue herein has to be decided as per Section 9 of the Guardian and Wards Act, 1890, which states as follows:-

"9 Court having jurisdiction to entertain application.- (1) If the application is with respect to the guardianship of the person of the minor, it shall be made to the District Court having jurisdiction in the place where the minor ordinarily resides. If the application is with respect of the guardianship of the property of the minor, it may be made either to the District Court having jurisdiction in the place where the minor ordinarily resides or to a District Court having jurisdiction in the place where he has property. If an application with respect to the guardianship of the property of a minor is made to a District Court other than that having jurisdiction in the place where the minor ordinarily resides, the Court may return the application if in its opinion the application would be disposed of more justly on conveniently by any other District Court having jurisdiction."

Thus, it is clear that the District court is having jurisdiction, where minor already resides. Since in this petition, it is stated by the petitioner that the child/minor is residing at Chrompet, Chennai coupled with the fact that Family Court alone is having the jurisdiction to decide the matter, as per Section 9 of the Guardian and Wards Act, I am inclined to transfer the Guardian O.P., as sought for by the petitioner herein.

8. Considering the submission made by the learned counsel appearing for the petitioner and the averments made in the affidavit filed in support of this petition, G.W.O.P.No.443 of

2014 is ordered to be withdrawn from the file of the Family Court, Tirunelveli and transferred to the file of the III Additional Family Court, Chennai, for disposal in accordance with law. The Family Court, Tirunelveli is directed to transmit the records pertaining to G.W.O.P.No.443 of 2014 to the file of the III Additional Family Court, Chennai, within a period of 15 days from the date of receipt of a copy of this order. On receipt of the material papers, the III Additional Family Court, Chennai is directed to dispose of the matter within three months from the date of such receipt of material papers.

9. Accordingly, this Transfer Civil Miscellaneous Petition is ordered. No costs. Consequently, connected miscellaneous petition is closed.

Sd/
ASSISTANT REGISTRAR (CS-II)

/TRUE COPY/

SUB-ASSISTANT REGISTRAR

nvsri

To

1. The Judge, Family Court, Tirunelveli.
2. The III Additional Judge, Family Court, Chennai.

+1 CC to MR.M.Devaraj Advocate. SR.NO. 61528
+1cc to Mr.R.Alvin Manoj Raj, Advocate Sr.61312[10/12/2015]

Tr.C.M.P. No.842 of 2014

CO-SK
JD 30/11/2015

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