



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.06.2015

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THE HONOURABLE MS. JUSTICE V.M.VELUMANI

Tr.C.M.P(MD) No.154 of 2015

and

M.P(MD)No.1 of 2015

Pandithurai

... Petitioner

Vs.

Shanmugapriya

... Respondent

Transfer Civil Miscellaneous Petition is filed under Section 24 of Civil Procedure Code to withdraw and transfer the proceedings in Guardian and Wards O.P.No.54 of 2015 on the file of the Principal District Judge, Villupuram to Principal District Judge, Pudukottai.

For Petitioner : Mr.V.Singan

For Respondent : Mr.P.Tamilarasu

ORDER

The Transfer Civil Miscellaneous Petition is filed to withdraw and transfer the proceedings in Guardian and Wards O.P.No.54 of 2015 on the file of the Principal District Judge, Villupuram, to Principal District Judge, Pudukottai.

2. The petitioner herein is the husband and the respondent is the wife. The marriage between the petitioner and the respondent was solemnized on 01.09.2008. The said marriage was dissolved by decree of divorce in H.M.O.P.No.238 of 2014. After the decree, the petitioner is residing at Pudukottai and the respondent is residing at Villupuram along with her parents and minor child and filed G.W.O.P.No.54 of 2015 before the Principal District Court, Villupuram, for declaring her as the legal guardian of minor. The petitioner has initiated proceedings in H.M.O.P.No.238 of 2014, alleging that the respondent violated the conditions imposed at the time of granting decree of divorce.

3. The petitioner has stated that at the time of divorce, he gave a sum of Rs.45,00,000/- towards maintenance of respondent and minor child. 3/4th of the amount to be invested in the name of minor child and interest alone must be drawn for the purpose of nurturing of the child and 1/4th of the amount alone is to be expended by the respondent, for herself. If there is any breach of promise and undertaking given by the respondent at the time of



divorce, petitioner is entitled to take proceedings, according to law, for fulfillment and compliance of terms.

4. The respondent has filed G.W.O.P.No.54 of 2015 on the file of Principal District Court, Villupuram. The petitioner entered appearance and has filed counter in the proceedings. The G.W.O.P., filed by respondent, is totally misconceived and proper procedure if any, available to her, is only under Section 13 of Hindu Minority and Guardianship Act r/w Section 26 of Hindu Marriage Act. The respondent did not initiate any proceedings at the time of decree of divorce and it is presumed that the respondent had waived the relief and consciously abandoned the same.

5. The reason given by the petitioner for transfer of G.W.O.P., from Principal District Court, Villupuram, to Principal District Court, Pudukottai, is that the respondent has threatened the petitioner, when he goes to Villupuram, for attending the Court. The petitioner apprehends that he stalked by hired hooligans to administer threat to his life. Therefore, he has come out with the present petition.

6. The learned counsel for the petitioner represented that the Principal District Court, Villupuram, has no jurisdiction and there is a statutory bar, for entertaining the G.W.O.p filed by the respondent and prayed for allowing the Tr.C.M.P.

7) The learned counsel for the petitioner reiterated various averments made in the affidavit and relied on the following judgments.

" AIR 1934 Allahabad 569 (Narain Das Gopal Das v. Khunni Lal Lachmi Narain)

"Similarly in *Ledgard V. Bull*, (5) the question for consideration by their Lordships of the Privy Council was as to the effect of an order transferring the suit from a Court in which it was instituted, and which admittedly had no jurisdiction to try the same, to a Court having jurisdiction to entertain the suit. In that case their Lordships approved of the decision of the Calcutta High Court in *Peary lall Mozumdar v. Komal Kishore* (7) in which the Calcutta High Court refused to exercise the power of transfer with respect to an appeal which was inadvertently filed in a wrong Court and left the appellant "to take necessary steps to place his appeal in the" Court in which the appeal ought to have been filed. The learned Judges observed in that case that they could, under S.25 Civil P.C., (Act 14 of 1882), direct the transfer of an appeal only from a Court having jurisdiction to receive and try it. These words must be read in the context in which they occur. As the appeal sought to be transferred had not been instituted in the



right Court, the learned Judges left it to the appellant to take his appeal to the right Court, and did not exercise the power of transfer vested in the Court by S.25 Civil P.C. When it is admitted that a suit or an appeal has been filed in a wrong Court, the District Court of the High Court would obviously be reluctant to transfer the same, for the simple reason that the order of transfer cannot cure the initial defect in the institution of the suit or the appeal in a Court not competent to entertain the same. But it is quite another thing to say that when the objection to jurisdiction is not patent on the fact of it, the power of transfer cannot be exercised. To hold so would be to unduly widen the scope of enquiry under S.24, Civil P.C., and to make it imperative on the High Court or the District Court, before passing an order of transfer, to enter into the vexed and troublesome question of the jurisdiction of the Court in which the suit or appeal was instituted, and there is no warrant for such a course furnished by the wordings of S.25, Civil P.C. It is true that their Lordships of the Judicial Committee summarized the decision of the Calcutta High Court in the following words:

"The superior Court cannot make an order of transfer of a case under S.25, Civil P.C., un-less the Court from which the transfer is sought to be made has jurisdiction to try it,"

"ii) AIR 1954 SC 340 (Kiran Singh v. Chaman Paswan)
Head note reads as hereunder:

"Head Note: (a) Civil P.C. (1908) Ss.9,21 - Decree passed without jurisdiction is nullity.

It is a fundamental principle that a decree passed by a Court without jurisdiction is a nullity, and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction whether it is pecuniary or territorial, or whether it is in respect of the subject-matter of the action, strikes at the very authority of the Court to pass any decree, and such a defect cannot be cured even by consent of parties.

iii) 1999(2) MLJ 318 (V.N.Sudanandan v. Dr.Chitra)

"Guardians and Wards Act (VIII of 1890), Sec.9(1)- Scope-petition by mother seeking guardianship of minor child filed in District Court, Pudukottai-Maintainability-Whether minor ordinarily resides in Pudukottai-Head, the place where a child takes education should be held to be place of ordinary residence'- Since minor was placed under custody of mother's parents for



transferred to the Family Court of Patna within the State of Bihar.

4. The District Judge, Palamu at Daltonganj is directed to send the records of the aforesaid matrimonial case at an early date preferably within six weeks from the date of supply of a copy of this order to him. The application for transfer is thus allowed. There will be no order as to costs. "

10. Heard the learned counsel appearing for the petitioner and the respondents.

11. I have carefully perused the materials on record and considered the arguments of the learned counsel for the petitioner and the respondent.

12. The contention of learned counsel for the petitioner that the learned Principal District Judge, Villipuram, has no jurisdiction to entertain the G.W.O.P., cannot be decided by this Court in the Tr.C.M.P. It is open to the petitioner to raise all the objections, which is open to him, as per law before the learned Principal District Judge, Villupuram. Admittedly, the respondent along with minor child is residing at Villipuram. The distance between Villupuram and Pudukkottai is 300 kms. The contention of learned counsel for the respondent that it will be very difficult for the respondent to travel to Pudukkottai with minor child, is well founded. The two judgments relied on by counsel for the respondent are squarely applicable to the facts of this case. The judgment relied on by the learned counsel for the petitioner not applicable to decide the Tr.C.M.P.

13. Following the judgments of Supreme Court that convenience of wife must be looked at and her difficulty to attend the Court away from her residence, the Tr.C.M.P., is devoid of merits.

14. For the above reason, the Tr.C.M.P., is dismissed. No costs. Consequently, connected miscellaneous petition is dismissed.

Sd/-

Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar

To

1 The Principal District Judge, Villupuram

2 The Principal District Judge, Pudukkottai

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