

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

Tr.C.M.P. Nos.117 and 119 of 2014

COMMON ORDER:

Tr.C.M.P.Nos.117 and 119 of 2014 are filed under Section 24 of C.P.C. to withdraw G.O.P.Nos.43 and 31 of 2014 from the file of the Family Court-cum-III Additional District Judge, Warangal and transfer the same to the file of the Family Court, Ranga Reddy District at L.B.Nagar for disposal in accordance with law.

2. The issue involved in both the Transfer Petitions is one and the same and hence, I am inclined to dispose of these two petitions by a common order. Tr.C.M.P.Nos.117 and 119 of 2014 are filed by the common petitioner/wife against the respondent/husband.

3. Learned counsel for the petitioner submitted that the petitioner is facing much difficulty to go to Warangal from Hyderabad to prosecute G.O.P.Nos.43 and 31 of 2014.

4. Learned counsel for the respondent submitted that the petitioner herself filed G.O.P.No.31 of 2014 on the file of the Family Court, Warangal and therefore, she is not entitled to file the present petitions.

5. A perusal of the record reveals that the marriage of the petitioner was performed with the respondent on 19.03.1998 at Jakaram Village, Mulugu Mandal, Warangal District as per Hindu Rites and Caste Custom. Immediately after the marriage, the petitioner joined the respondent to lead happy marital life. Out of lawful wedlock, the petitioner and the respondent were blessed with two sons. The petitioner and the respondent along with their children lived together at Warangal up to 2013. For obvious reasons, bad weather prevailed in the family life of the petitioner and the respondent. The petitioner has been residing at Hyderabad at her parents' house since 2013. The petitioner lodged a complaint to the Station House Officer, Chandanagar Police Station, who in turn registered a case in Crime

No.691 of 2013 against the respondent and others for the offences punishable under Section 498-A I.P.C. and Sections 3 and 4 of the Dowry Prohibition Act, 1961. The petitioner also filed M.C.No.273 of 2013 on the file of the Family Court, Ranga Reddy District seeking maintenance from the respondent. The petitioner filed G.O.P.No.31 of 2014 on the file of the Family Court, Warangal under Sections 7 and 25 of the Guardians and Wards Act, 1890 (for short, 'the Act') seeking custody of her younger son by name Bandi Siddhartha. The respondent filed G.O.P.No.43 of 2014 on the file of the Family Court, Warangal under Sections 7, 10 and 25 of the Act seeking custody of Bandi Karthik.

6. It is a settled principle of law that while deciding the petitions filed under Guardians and Wards Act, the paramount consideration is the welfare of the children. While deciding the petitions of this nature, the Court has to take into consideration the inconvenience likely to be caused to the parties to the proceedings. Admittedly, Siddhartha and Karthik are not parties to these petitions. At the time of arguments, learned counsel for both the parties in one voice submitted that the sons of the petitioner and the respondent are aged about 14 years and 12 years respectively. It is not in dispute that both the petitioner and the respondent hails from Warangal District. At the time of arguments, the learned counsel for the petitioner submitted that the petitioner has been residing in Hyderabad at her brother's house. The petitioner/wife filed G.O.P.No.31 of 2014 on the file of the Family Court, Warangal on 07.11.2013 whereas the respondent filed G.O.P.No.43 of 2014 in the month of February, 2014.

7. Learned counsel for the petitioner submitted that initially, the petitioner filed the petition in Family Court, Ranga Reddy District, which was returned with an endorsement that the same shall be presented before an appropriate Court.

8. It appears that the petitioner filed G.O.P.No.31 of 2014 at

Warangal under the impression that the Family Court at Warangal alone is competent to entertain the petition. The petitioner, having chosen the Family Court at Warangal is the appropriate forum for redressal, filed the present petitions on the ground that she has been residing at her brother's house. It is not the case of the petitioner that her parents are not residing within the territorial jurisdiction of the Family Court, Warangal. After filing of these petitions, the petitioner also filed one criminal case and one maintenance case against the respondent in Ranga Reddy. Mere pendency of criminal case and maintenance case, that itself, is not a valid ground to transfer the matters automatically without taking into consideration the scope of Section 8 of the Act.

Section 9 (1) of the Act reads as under:

"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."

9. At the time of arguments, learned counsel for both the parties in one voice submitted that Karthik and Siddartha are at present residing along with his father i.e., the respondent. The fact remains that as on today, the children are in the custody of the father at Warangal. The Court should not lose sight of this fact while deciding this type of petitions. If these petitions are transferred from Family Court, Warangal to Family Court, Ranga Reddy, it may cause untold hardship not only to the respondent but also to his children. This Court is very much concerned about the children and not the petitioner and the respondent, who are fighting in the Courts without visualizing plight of the children.

10. Having regard to the facts and circumstances of the case and the scope of Section 9 of the Act as well as the welfare of the minor children, I am of the considered view that the petitioner failed to make

out grounds much less valid grounds to transfer these petitions.

11. In the result, both the Transfer Civil Miscellaneous Petitions are dismissed. There shall be no order as to costs.

12. Consequently, Miscellaneous Petitions, if any, pending in both the Transfer Civil Miscellaneous Petitions, shall stand closed.

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T.SUNIL CHOWDARY, J

Date: 17.06.2015

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