



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.10.2016

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

TR.C.M.P (MD) No.251 of 2016

T.S.Alagia Nayagi

... Petitioner

Vs.

S.Suresh

... Respondent

Prayer: The Transfer Civil Miscellaneous Petition is filed under Section 24 of Civil Procedure Code to withdraw the G.W.O.P.No.194 of 2015 before the Principal District and Sessions Court, Thiruvallur and transfer the same to the file of the Principal District Court, Tirunelveli.

For Petitioner : Mr.H.Arumugam

For Respondent : Mr.Auxilia Peter

O R D E R

The Transfer Civil Miscellaneous Petition is filed seeking to withdraw the G.W.O.P.No.194 of 2015 on the file of the Principal District and Sessions Court, Thiruvallur and transfer the same to the file of the Principal District Court, Tirunelveli.

2. The marriage between the petitioner and the respondent was solemnized on 27.01.1999, as per Hindu Rites and Customs at Nagercoil and out of wedlock, one male child and one female child were born on 13.03.2000 and 25.04.2001 respectively.

3. The contention of the petitioner is that she filed a divorce petition in H.M.O.P.No.31 of 2014 before the Subordinate Court, Tirunelveli, on the ground of cruelty and desertion. Subsequently, the same was transferred to the Family Court, Tirunelveli and renumbered as H.M.O.P.No.320 of 2014. The respondent filed a H.M.O.P.No.496 of 2014 before the Family Court, Tirunelveli, for dissolution of marriage, on the ground of cruelty and also suspecting the morality of the petitioner. The Court granted divorce on the ground of cruelty, but rejected the ground of adultery, on 05.03.2015. Subsequently, the petitioner filed a petition for maintenance of two minor children in M.C.No.29 of 2015 before the Family Court, Tirunelveli and the same was allowed on 17.08.2015, directing the respondent to pay a sum of Rs.30,000/- per month towards the maintenance of two children. But the respondent failed to pay



the maintenance till today. But he filed a petition for the custody of minor children in G.W.O.P.No.194 of 2015 only with an idea to evade the payment of maintenance to the petitioner and her minor children. Further, the petitioner contended that the children are with her and they are school going in Tirunelveli. Therefore, she will not be in a position to travel from Tirunelveli to Thiruvallur along with the children to defend the case effectively.

4. The learned counsel for the petitioner contended that Section 9 of the Guardian and Wards Act, 1890, categorically enumerates that if the application is with respect to the guardianship of the minor, it shall be made to the District Court having jurisdiction in the place where the minor 'ordinarily resides' and in view of Section 9, the respondent cannot have any ground to oppose the petition and the petition is to be allowed.

5. The learned counsel for the respondent opposed the grounds raised by the petitioner by stating that he is in Chennai and the dissolution of marriage happened at the instance of the petitioner and therefore, he had no fault and therefore, the petition is to be dismissed.

6. Considering the facts and circumstances of the case and in view of Section 9 of the Guardian and Wards Act, 1890, this Court is of the view that the contention of the petitioner deserves consideration and accordingly, the Transfer Civil Miscellaneous Petition is allowed and the G.W.O.P.194 of 2015 pending before the Principal District and Sessions Judge, Thiruvallur is ordered to be transferred to the Principal District Court, Tirunelveli forthwith. No costs.

Sd/-

Assistant Registrar(AE)

/True Copy/

Sub Assistant Registrar

To

1. The Principal District and Sessions Court,
Thiruvallur.
2. The Principal District Court,
Tirunelveli.

+1cc to Mr.H.Arumugam, Advocate in SR No.63647