

THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

Transfer Civil Miscellaneous Petition No.634 of 2016

ORDER:

This transfer application, under Section 24 of the Code of Civil Procedure, 1908, is filed by the respondent's parents-in-law, who are having custody of the children of the respondent, seeking transfer of G.O.P.No.831 of 2016 from Family Court, Visakhapatnam, to the Family Court Rajahmundry, East Godavari District, for trial and disposal in accordance with the procedure established by law. The said OP was filed by the respondent for custody of his children.

2. I have heard the submissions of Sri. *Ch.Shanmukha Rao*, the learned counsel for the petitioners. I have perused the material record. The memo of proof of service filed into the Registry discloses that as per the track record downloaded from the website of the postal department, the respondent is served with the notice. Despite service of notice, the respondent did not enter appearance; and none appeared for the respondent.

3. Shorn of unnecessary details, the case of the petitioners is as follows: 'The petitioners are the parents-in-law of the respondent. Their elder daughter's marriage was performed with the respondent in the year 2003 at Visakhapatnam. After consummation of the marriage and during her lawful wedlock, their daughter gave birth to two children, namely, Seeku Mahima Karishma; and Seeku Ebinazar, who are presently aged 10 and 8 years, respectively. Immediately after the

marriage, their elder daughter and the respondent lived at Singapore for certain years and later returned to India and settled at Visakhapatnam. Subsequently, their elder daughter died. Since the date of the death of their elder daughter, both the children are in their custody and are living with them. They are looking after the children and taking care of them and providing education and all comforts to the children. While so, after two years after the death of their daughter, the respondent filed the subject G.O.P.No.831 of 2016 on the file of Family Court, Visakhapatnam, for custody of children. The children are staying with the grand parents/petitioners herein. In cases of custody of children, the paramount consideration is the welfare of the children; and, the place at which the children are staying with the petitioners is best suited for deciding the custodial rights of the children. The petitioners are not in a position to travel to Visakhapatnam along with the children to attend the proceedings in the GOP on the dates of every adjournment. They are aged 65 and 57 years respectively and are suffering with old age ailments. Hence they are constrained to file the present petition for transfer.”

4. Having regard to the pleadings and the submissions of the learned counsel for the petitioners made in-line with the pleadings extracted *supra*, this Court is satisfied that sufficient cause is shown for granting the relief, as the law is well settled that in the matters of this nature, the paramount consideration is the welfare of the children and it is also a guiding factor. If the relief, as sought for, is granted, it would be convenient not only for the aged parents-in-law of the

respondent, but also for the children, as it would obviate the necessity of the petitioners travelling along with the children from Rajahmundry to Visakhapatnam which is at a distance of approximately 200 kilometres. Moreover, the respondent, having not entered appearance and having remained *ex parte*, has not shown any special circumstances to take a different view. This Court is thus satisfied that sufficient cause is shown for granting the relief.

5. In the result, this petition is allowed and G.O.P.No.831 of 2016 filed by the respondent herein for custody of his children is withdrawn from the file of the Family Court, Visakhapatnam, and is transferred to the Family Court Rajahmundry, East Godavari District, for trial and disposal in accordance with the procedure established by law. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this Transfer CMP, shall stand closed.

M. Seetharama Murthi, J

29th December, 2016
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