

HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

Tr.CMP.No.677 of 2015

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ORDER:

This Transfer CMP is filed by the petitioner against the respondents who are her in-laws, for transfer of OP.No.906 of 2015 pending on the file of the Additional Family Court, City Civil Court, Hyderabad, to the Family Court, Kadapa.

The case of the petitioner is that her marriage was performed with the son of the respondents on 18.03.2011 without their consent and blessed with a male child. While so, on 12.05.2014, the husband of the petitioner died and as such, she went to her in-laws. But, her in-laws used to insult and quarrel with the petitioner on petty issues and failed to take proper care of the petitioner and her minor son. Finally, the petitioner's health became worse, as such, the parents of the petitioner took the petitioner and her son to their house on 01.06.2014. While so, the respondents filed OP.No.906 of 2015 before the Additional Family Court, City Civil Court, Hyderabad for custody of petitioner's son who is aged about

3½ years. The grievance of the petitioner is that as her parents are old aged it is very difficult for her to travel

450 K.Ms from Kadapa to Hyderabad without any male assistance and that since the minor is residing at Kadapa along with the petitioner, the Additional Family Court at Hyderabad has no jurisdiction; only Family Court at Kadapa has jurisdiction. Hence, the petitioner filed this petition for transfer of OP.No.906 of 2015.

The respondents filed counter denying the allegations made against them. The respondents admitted that the petitioner is their

daughter-in-law and her marriage with their son and also admitted the discord in the family. It is further stated that the 1st respondent is aged 66 years and the 2nd respondent is aged 54 years and that they cannot travel from Hyderabad to Kadapa because of their old age and sought for dismissal of the transfer CMP.

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

In this case the grievance of the petitioner is that even before filing OP.No.906/2015 by the respondents, the petitioner left the matrimonial house along with her minor son, as such, the Addl.Family Court, City Civil Court, Hyderabad has no jurisdiction, since the minor child is residing with her mother at Kadapa. But the learned counsel for the respondents disputes the same.

Para-15 of the OP.No.906 of 2015 filed by the respondents reads as follows;

15. Cause of Action: The cause of action arose on 18.03.2011 when the marriage took place at Hyderabad. Further, the cause of action arose on 07.05.2012 when the minor was born at Hyderabad. The cause of action also arose on 01.06.2014 when the respondent ultimately left the matrimonial house along with minor child by removing him from the custody and care of this petitioners and the cause of action still continuing.

Though learned counsel for the respondents stated that after filing of OP the petitioner left for Kadapa, but the assertions of the respondents at Para-11 of the OP goes to show that even before filing of the OP, the petitioner along with the minor child left for Kadapa and staying there.

Section 9(1) of the Guardians and Wards Act, 1890 reads 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.

In view of Section 9(1) of the Guardians and Wards Act, since the minor is residing at Kadapa, the Family Court at Hyderabad has no jurisdiction to try the OP filed by the respondents under Guardians and Wards Act.

Section 24(5) of CPC reads as follows:

24(5): A suit or proceeding may be transferred under this section from a Court which has no jurisdiction to try it.

In view of the above provisions, since the Family Court, at Hyderabad has no jurisdiction the OP is liable to be transferred to the Family Court at Kadapa, as per Section 24(5) of CPC.

Accordingly, the transfer CMP is allowed and OP.No.906 of 2015, pending on the file of the Court of Additional Family Court, City Civil Court, Hyderabad, is transferred to the Family Court, Kadapa. No order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending in the transfer petition, shall stand closed.

A.RAJASHEKER REDDY, J

09.02.2016
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