HON'BLE SRI JUSTICE S. RAVI KUMAR

TRANSFER C.M.P.No.746 of 2015

ORDER:

This petition is filed to transfer guardian O.P.No.1186 of 2015 from the file of Family court-cum-V Additional District and Sessions Judge, Visakhapatnam, to Principal District Judge, West Godavari District at Eluru, to be tried along with guardian O.P.No.463 of 2015 pending there.

2. Petitioner contended that his marriage with his deceased wife took place on 12.02.2011 at Umiya Bhawan, N.A.D. Junction, Visakhapatnam and their marriage was a love marriage and with the consent of both families it was performed. It is further contended that after birth of a child, his wife fell sick and ultimately she was diagnosed as cancer patient and in spite of treatment she died on 14.09.2014. He further contended that on the advise of parents of his late wife, he again married a lady by name Yaswanthi, who was a friend of his deceased wife. He contended that thereafter there were no ill feelings and the child was with him and the child used to go to his material grandparents' house whenever requested and that the child adjusted with petitioner's parents and petitioner's second wife. He contended that the child was joined in St. Augustine English Medium School, Pedapadu, in L.K.G. He contended that father of his late wife came to their house in the last week of July

and took the minor child on the ground that his elder daughter came from Dubai and she intended to see the child and in view of the close and cordial relations he has not objected the child to go to Visakhapatnam with the father of his late wife. He contended that thereafter there was no contact with the father of his late wife and when he went to Visakhapatnam the house was locked and that he was informed that the family members of deceased wife are not willing to send the child back and after coming back to the village having no other alternative, he filed guardian O.P.No.463 of 2015 before Principal District Judge, West Godavari at Eluru, seeking custody of child and for other reliefs. He stated that respondent No.1 herein, who is the father of his late wife, filed guardian O.P.No.1186 of 2015 before Family Court, Visakhapatnam, to appoint him as guardian for the minor child. He contended that both the cases have to be decided by one Court, therefore this petition is filed seeking transfer of guardian O.P.No.1186 of 2015 from Family Court-cum-V Additional District and Sessions Judge, Visakhapatnam, to Principal District Judge, West Godavari District at Eluru, to be tried along with guardian O.P.No.463 of 2015.

3. Respondents filed counter opposing affidavit averments and contended that after death of daughter of respondent No.1, petitioner completely neglected the minor child and did not provide any amenities and in spite

of the request of this respondent to take care of the minor child to provide minimum amenities, petitioner did not accede to his request and his family members. It is further contended that petitioner, his parents and his relations never bothered to look after the welfare of the minor child and petitioner opted for second marriage on his own and she is not in a position to extend love and affection to the minor child. It is further contended that petitioner is very careless and selfish as he married within six months of the death of the mother of the minor child and that respondent No.1 never advised petitioner to have a second marriage. It is further contended that the marriage was without informing respondent No.1 and his family members. It is further stated that petitioner filed I.A.No.1817 of 2015 in guardian O.P.No.463 of 2015 seeking direction to respondent No.1 to hand over interim custody of the minor child and that application was dismissed on 23.12.2015 and that the minor child is with respondent No.1 at Visakhapatnam and therefore, Family Court, Visakhapatnam, has got jurisdiction to entertain petition and therefore, the question of transfer of guardian O.P.No.463 of 2015 from Visakhapatnam to West Godavari District does not arise. It is further contended that respondent No.1 herein is now drawing more than Rs.30,000/- by way of pension apart from income on immovable properties and he can provide better amenities to the minor child and there are no grounds to transfer

guardian O.P.No.463 of 2015 from Visakhapatnam to Eluru, therefore, transfer petition is liable to be dismissed.

4. Heard both sides.

5. Advocate for petitioner mainly contended that as per Section 14 of Guardians and Wards Act, 1890 (for short, 'the Act') if there are simultaneous proceedings in different Courts, the Courts are expected to inform the same to High Court and that the High Court shall determine in which Court the proceedings have to be continued. He submitted that both Courts have not intimated the pendency of these petitions to the High Court and therefore, this Court has to pass appropriate orders. He further submitted that even Section 14 of the Act is not applicable, as both the contentions in both the petitions are same they have to be tried by one Court to avoid conflicting opinions.

6. On the other hand, advocate for respondents submitted that Section 14 of the Act has no application since the petition filed by petitioner herein is for custody of minor whereas the petition filed by respondent No.1 before Visakhapatnam is to declare him i.e., respondent No.1 herein as the guardian to the minor child.

7. I have perused the provisions of Section 14 of the Act including definition of 'guardian' under Section 4(2) of the Act. As seen from the copies of petitions filed by respective parties before respective Courts, petition filed by petitioner herein is for custody of the minor child

invoking Section 25 of the Act. Whereas the petition filed by respondent No.1 herein is for appointment of guardian. Section 14 of the Act contemplates in respect of simultaneous proceedings where proceedings are for appointment or declaration of guardian of a minor. Here, petition filed before the Eluru Court is for custody of minor claiming as natural guardian of the minor. Whereas petition filed before Visakhapantam Court is seeking appointment of guardian on the ground that the natural guardian is not looking after the welfare of minor and not providing required amenities like food and cloth. Now the contentions and rival contentions of both parties with regard to their respective reliefs in the petitions is a matter to be decided in those petitions and this Court cannot go into those aspects. As per Section 14 of the Act where both petitions are filed seeking appointment or declaration of guardian of a minor, a duty is caste upon the Courts below to inform the same by way of report to the High Court and then the High Court shall determine in which of the Courts the proceedings have to be continued and it is clear that both the petitions are not filed for appointment of guardian or declaration and only one petition is for such relief and the other petition is only for the custody of the child as natural guardian invoking the provisions under Section 25 of the Act. Therefore, the contention of advocate for petitioner that the Courts have not followed the provisions under Section 14 of the Act cannot be

accepted.

8. Now as seen from the record, out of two guardian O.Ps., guardian O.P. at Visakhapatnam is filed for appointment of guardian for the minor and from the pleadings admittedly the minor is now at Visakhapatnam. The petition filed before the District Court, Guntur, is for custody of the minor as natural guardian and as rightly pointed out by advocate for petitioner, these two petitions have to be tried by one Court to avoid conflicting opinions and also in the interests of minor. Since the application filed before Visakhapatnam Court is comprehensive in nature and as the minor is also within the jurisdiction of Visakhapatnam Court, I am of the view that guardian O.P. before the West Godavari District has to be withdrawn and transferred to Family Court, Visakhapatnam, to be tried along with guardian O.P.No.1186 of 2015 pending there.

9. For these reasons, transfer C.M.P. is ordered withdrawing Guardian O.P.No.463 of 2015 from Principal District Judge, West Godavari at Eluru, and transferring the same to Family Court-cum-V Additional District Judge, Visakhpatnam, to be tried along with guardian O.P.No.1186 of 2015. Family Court-cum-V Additional District Judge, Visakhapatnam, shall dispose of both these cases simultaneously, in view of the interest of the minor, as expeditiously as possible preferably within four months from the date of receipt of records.

10. Miscellaneous petitions pending, if any, shall stand

closed.

S. RAVI KUMAR, J

21st March 2016.

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