

HON'BLE SRI JUSTICE S. RAVI KUMAR

TRANSFER C.M.P.No.290 of 2016

ORDER:

This petition is filed to withdraw O.P.No.46 of 2015 from the file of Senior Civil Judge, Bhongir, Nalgonda District, and transfer the same to Principal Senior Civil Judge, Mancherial, Adilabad District.

2. Wife filed this petition. According to her affidavit, her marriage with respondent was performed on 12.05.2004 and due to harassment for additional dowry, she lodged a complaint before police, Lingala Ghanpur of Warangal District, where counselling was conducted on 13.06.2006 and respondent undertook that he and his parents will take care of petitioner and her child, but, in spite of that respondent and his parents did not change their attitude, therefore, she was constrained to file C.C.No.449 of 2009, which was re-numbered as C.C.No.27 of 2015 and the said case ended in acquittal and that she preferred criminal appeal. She further stated that she filed O.P.No.79 of 2015 before Principal Senior Civil Judge, Mancherial, for restitution of conjugal rights and respondent filed O.P.No.46 of 2015 before Senior Civil Judge, Bhongir, Nalgonda District, seeking dissolution of marriage. She stated that she is a government teacher in UPS, Subbarampalli of Chennur Mandal of Adilabad District and presently residing at CCC Naspur, Mancherial

Mandal. She further stated that it is difficult for her to go to Bhongir for the purpose of O.P.No.46 of 2015 as she has to attend on her daughter as well as on her job. For these reasons, she prayed for transfer of O.P.No.46 of 2015 from Senior Civil Judge, Bhongir, Nalgonda District, to Principal Senior Civil Judge, Mancherial.

3. Respondent filed counter opposing the transfer and denying the allegations of harassment etc., and contended that he filed O.P.No.46 of 2015 on 20.08.2015 and petitioner herein filed O.P.No.79 of 2015 before Principal Senior Civil Judge, Mancherial, on 16.09.2015. He further stated that transfer petition itself is not maintainable by virtue of the bar under Section 21(A)2(a) of Hindu Marriage Act, 1955 (for short, 'Act') and stated that he filed divorce petition earlier and this being a special provision made under the special enactment it overrides the procedural jurisdiction under Section 24 C.P.C. Hence, transfer petition is liable to be dismissed in limine. He stated this case do not warrant any transfer in view of legal bar contained under special enactment. He further stated that parties are working as Special Grade Teachers and getting equal salary and the present petition is filed only to protract the proceedings, therefore, prayed for dismissal of transfer petition.

4. Heard both sides.

5. Both sides submitted their arguments supporting the respective contentions of their clients.

6. Advocate for petitioner submitted that in view of the decision of Hon'ble Supreme Court in **Guda Vijayalakshmi v. Guda Ramchandra Sekhara Sastry**^[1], the power under Sections 23 to 25 C.P.C. for transfer of cases is a substantive provision and it cannot exclude by virtue of Section 21-A of Hindu Marriage Act. He further submitted that this Court has power to entertain transfer application and Sections 21 and 21-A of the Act do not, in any way, exclude or curtail the power conferred under Section 24 C.P.C. In reply to this argument, advocate for respondent submitted that to avoid conflicting decisions, both the cases have to be tried by one Court, but which case has to be transferred is the matter covered by Section 21 of the Act, therefore, in view of the mandate under Section 21-A of the Act, petition filed by wife should be transferred to the Court of Bhongir, where respondent's petition is pending which was earlier in point of time. He further submitted as the marriage was performed within the jurisdiction of Senior Civil Judge, Bhongir, that Court has got jurisdiction to entertain the dispute between the wife and respondent.

7. Now the point that would arise for my consideration in this transfer petition is:

Whether O.P.No.46 of 2015 on the file of Senior Civil Judge, Bhongir, Nalgonda District, can be transferred to Principal Senior Civil Judge, Mancheri, Adilabad District, to be tried along with O.P.No.79 of 2015 pending therein?

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POINT :

8. The main objection of respondent is in respect of maintainability of application under Section 24 C.P.C. in view of the mandate under Section 21-A of Act. In the above referred Supreme Court decision the very same kind of objection was raised as to the power under Section 25 of C.P.C. and the Hon'ble Supreme Court clarified that the power and jurisdiction enjoyed under Sections 23 to 25 of C.P.C. are substantive and the provisions under Section 21 or 21-A of the Act do not, in any way, exclude or curtail such power conferred under Sections 23 to 25 of C.P.C. Therefore, in view of the above referred decision, the objection of respondent with regard to the power of this Court under Section 24 C.P.C. to transfer cases is not tenable and the same is overruled.

9. Now coming to the facts, admittedly wife filed O.P. on 16.09.2015 whereas husband filed O.P. on 20.08.2015 and both the cases are before different Courts. It is not in dispute that these two cases have to be tried by one Court to avoid conflicting decisions. Now the objection of respondent/husband is that O.P. filed by wife has to be transferred to Senior Civil Judge, Bhongir, where the marriage took place and as respondent filed O.P. earlier to the O.P. filed by wife. The contention of wife is that it is difficult for her to travel from Mancherla to Bhongir and

that she has to look after the education of her daughter, who is staying with her. As seen from the material, both the petitioner and respondent are employees working as teachers at different places. In **Sumita Singh v. Kumar Sanjay**^[2], the Hon'ble Supreme Court clarified that in case of transfer of cases convenience of wife is paramount consideration, therefore, relying on this decision convenience of wife has to be given priority.

10. For these reasons, O.P. filed by husband i.e., O.P.No.46 of 2015 is withdrawn from Senior Civil Judge, Bhongir, Nalgonda District, and transferred to Principal Senior Civil Judge, Mancherial, Adilabad District, to be tried along with O.P.No.79 of 2015.

11. Accordingly, transfer C.M.P. is ordered.

12. Miscellaneous petitions pending, if any, shall stand closed.

S. RAVI KUMAR, J

1st August 2016.

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^[1] AIR 1981 SC 1143 (1)

^[2] AIR 2002 SC 396