



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED :31.07.2017
CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU
TR.C.M.P (MD)No.98 of 2017
and C.M.P. (MD)No.2388 of 2017

WEB COPY

1.Subbaiah
2.Alagar
3.Chinnammal

... Petitioners/Respondents

Vs.

1.Minor.Dinesh
2.Minor Anusiya Devi
rep.through their Grand parents,
Thangam @ Kattu Raja,
S/o.Chinnathambiya Pillai
&Tmt.Pulatchiyar Ammal
W/o.Thangam @ Kattu Raja,
residing at Seyyalur Village,
Melapidavur Post,
Manamadurai Taluk,
Sivagangai District.

... Respondents/Petitioners

PRAYER:- This transfer Civil Miscellaneous Petition filed under Section 24 of Civil Procedure Code to withdraw the petition in G.W.O.P.No.25 of 2014 on the file of the District court, Sivaganga and transfer the same to the Principal District Court, Dindigul.

(deletion and insertion of case number is amended vide Court order dated 27.06.2017 made in CMP(MD).No.5509 of 2017 in Tr.CMP(MD).No.98/2017)

For Petitioners : Mr.A.Arul Jenifer
For Respondents : Mr.R.Rajaraman

ORDER

This transfer Civil Miscellaneous Petition filed under Section 24 of Civil Procedure Code to withdraw the petition in G.W.O.P.No.25 of 2014 on the file of the District court, Sivaganga and transfer the same to the Principal District Court, Dindigul.

2. The first petitioner is the father of the minor children, who are arrayed as the respondents herein and the second and the third petitioners are the grand patents of the minor respondents herein, and the minor respondents represented through their maternal grandparents in G.W.O.P.No.25 of 2014 pending on the file of the District Court, Sivaganga, Sivagangai District.

<https://hcservices.ecourts.gov.in/hcser/CaseFile.aspx?CaseNo=98of2017> The case of the petitioners is that the marriage between the first petitioner and the daughter of the representing respondents was solemnized on 13.11.2009 and out of their wedlock,

Court,
petitioner.

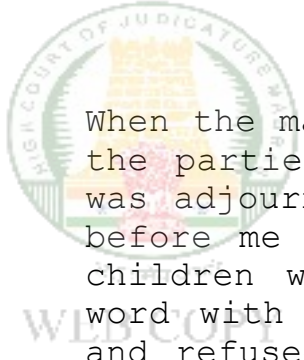
where the minor children ordinarily resides.

District Court, Dindigul.

the transfer civil miscellaneous petition.

learned counsel for the respondents

<https://hcservices.ecourts.gov/8in/hcservices/>



When the matter was heard by me on 26.07.2017, this Court directed the parties to be present with the minor children and the matter was adjourned to 31.07.2017 and today, when the matter was posted before me in the Chamber, at the request of the respondents, the children were given to the respondents for some time to have a word with the children, but within a few minutes, they screamed and refused to go with the respondents which might be due to the separation of the minor children since 2014. In any event, the only question before me to find out whether the minor children resides with the natural guardian or with the respondents herein. In this connection, it is useful to refer the judgment reported in 2016 (3) MWN (Civil) 504, A.Raisa Nasrin Vs. A.S.Bilal, wherein, in paragraph No.9 it has been held as follows:-

"9. The Hon'ble Supreme Court of India in paragraph No.24 has stated that whether the minor is ordinarily residing at a given place is primarily a question of intention which in turn is a question of fact. It may at best be a mixed question of law and fact, but unless the jurisdictional facts are admitted it can never be a pure question of law, capable of being answered without an enquiry into the factual aspects of the controversy. The factum in the present case on hand is very clear that the the petitioner and the respondent are living separately and the female child aged about 6 years is in the custody of the petitioner and further she is studying 1st Standard in ILM Public School at Ilayangudi, Sivagangai District."

9. Apart from the above, even as per Section 9 of the Act, it is stated 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."

10. In the light of the afore-said judgement coupled with the Section 9 of the Act, it is clear that normally where the minor children are residing would be the place of jurisdiction for entertaining the application in the matter of guardian and wards act for claiming the custody of the minor children and therefore, I do not find any hesitation to transfer and to withdraw the petition pending in G.W.O.P.No.25 of 2014 on the file of the District court, Sivaganga to transfer the Principal District Court, Dindigul.

11. At this juncture, the learned counsel appearing for the petitioners would submit that G.W.O.P.No.25 of 2014 on the file of the District court, Sivaganga is transferred and renumbered as G.W.O.P.No.1 of 2017 on the file of the Family Court, Sivaganga.



12. Considering the facts and circumstances of the case, this petition is allowed on the following terms:-

(i) The learned Judge, District court, Sivaganga is directed to transfer all the papers relating to G.W.O.P.No.1 of 2017 (being old No.G.W.O.P.No.25 of 2014) to the Principal District Court, Dindigul, within a period of two weeks from the date of receipt of a copy of this order.

(ii) On receipt of the same, the learned Principal District Court, Dindigul, is directed to dispose of the case in G.W.O.P.No.1 of 2017 (being old No.G.W.O.P.No.25 of 2014), on merits and in accordance with law, as expeditiously as possible, preferably, within a period of six months, thereafter.

No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar

To,

(I)The District court, Sivaganga.

(II)The Principal District Court, Dindigul.

+1cc to M/S.R.Rajaraman, Advocate SR.No. 68924

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ssm

JM/SV AA/SAR 2/17.08.2017/4P/4C