

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

TRANSFER C.M.P. No.861 of 2016

ORDER:

This transfer civil miscellaneous petition is filed under Section 24 of CPC seeking to withdraw O.P.No.1684 of 2016 from the file of Family Court, Kukatpally at Miyapur and transfer the same to the Family Court, Eluru, West Godavari District.

2. Heard the learned counsel for both the parties and perused the material available on record.

3. The marriage of the petitioner was performed with the respondent on 27.11.2009, at Kantheru Village, Iragavaram Mandal, West Godavari District, as per Hindu rites and caste customs. Immediately after the marriage, the petitioner joined the respondent to lead marital life. The petitioner and the respondent lived together for some time at Mumbai, Mysore, Chennai and Hyderabad. Out of the lawful wedlock, they were blessed with two children. Due to one reason or the other, disputes arose between the petitioner and the respondent; therefore, the petitioner has been residing at her parents' house along with her children. While things stood thus, the respondent filed O.P. No.1684 of 2016 on the file of the Family Court, Kukatpally at Miyapur against the petitioner under Section 9 of the Guardian and Wards Act, 1890, for custody of the children. Section 9 of the Guardian and Wards Act makes a specific provision as regards the jurisdiction of the Court to entertain a claim for grant of custody of a minor. While sub-Section (1) of Section 9 deals with the competency of the Court to pass an order for the custody of the ward, sub-Sections (2) & (3) thereof deal with courts that can be approached for guardianship

of the property owned by the minor. Section 9(1) is, therefore, relevant for the purpose, which 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.

It is evident, from a bare reading of the above, that the solitary test for determining the jurisdiction of the court under Section 9 of the Act is the 'ordinary residence' of the minor. In the instant case, even as per the averments made in O.P. No.1684 of 2016, the minor children are residing with the petitioner at Kantheru Village, Iragavaram Mandal, West Godavari District. Therefore, the District Court, West Godavari District, at Eluru is having the jurisdiction, to deal with the matter.

4. Having regard to the facts and circumstances of the case and also the principle enunciated in the cases cited supra, I am of the considered view that the relief sought by the petitioner can be granted. Today, this Court allowed Transfer CMP No.821 of 2016 transferring O.P. No.1738 of 2016 filed by the respondent on the file of the Family Court, Kukatpally at Miyapur against the petitioner under Section 13(1)(i-a) of the Hindu Marriage Act for dissolution of marriage between them, to the Family Court, Eluru, West Godavari District.

5. The learned counsel for the respondent submitted that the presence of the respondent before the trial court on each and every date of adjournment may be dispensed with. Even if the presence of the respondent before the trial court is dispensed with, no prejudice will be caused to the petitioner.

6. Accordingly, the Transfer CMP is allowed. O.P. No.1684 of 2016 is withdrawn from the file of the Family Court, Kukatpally at Miyapur and transferred to the file of Family Court, Eluru, for disposal in accordance with law. The Family Court, Eluru is hereby directed to dispense with the presence of the respondent in connection with O.P. No.1684 of 2016, on each and every date of adjournment. However, he shall appear before the trial Court as and when his presence is so required. Miscellaneous petitions, if any, pending in this transfer petition shall stand closed.

Date: 03.4.2017
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T. SUNIL CHOWDARY, J

