

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

Tr.C.M.P. No.134 of 2017

ORDER:

This petition is filed under Section 24 of C.P.C. seeking to withdraw G.O.P.No.801 of 2016 from the file of the Additional Family Court at Visakhapatnam, and transfer the same to the file of the Family Court at Vijayawada, Krishna District.

2. In spite of service of notice, the respondent did not choose to appear and contest the petition. Hence, this Court is inclined to dispose of the matter on merits.

3. Heard the learned counsel for the petitioner and perused the material available on record.

4. A perusal of the record reveals that the marriage of the petitioner was performed with the respondent on 03.09.1999 at Anglo Indian Kalyanamandapam, Visakhapatnam, as per Hindu Rites and Caste Custom. Immediately after the marriage, the petitioner joined the respondent to lead marital life. Out of lawful wedlock, the petitioner and respondent were blessed with one son and one daughter. Due to one reason or other, disputes arose between the petitioner and respondent; therefore, the petitioner has been residing at her parents' house in Vijayawada along with her two children. The respondent filed O.P.No.799 of 2016 on the file of the Additional Family Court at Visakhapatnam, under Section 13(1)(ia) and (ib) of the Hindu Marriage Act, 1955, against the petitioner for dissolution of marriage between them.

5. A perusal of the record reveals that the petitioner filed M.C.No.203 of 2015 on the file of the Family Court at Vijayawada against the respondent seeking maintenance. The respondent filed G.O.P.No.801 of 2016 on the file of the Additional Family Court at Visakhapatnam, under Section 7 read with 10 of the Guardian and Wards Act, 1890, to appoint him as a guardian of the minor children. Section 9(1) of the Guardian and Wards Act 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.

A perusal of Section 9(1), at a glance, mandates that a person, who seeks custody of a ward, has to approach the District Court within whose territorial jurisdiction the ward is ordinarily residing. In the instant case, even as per the averments made in G.O.P.No.801 of 2016, the minor children are residing with the petitioner in Vijayawada, Krishna District. Therefore, the Family Court at Vijayawada is having the jurisdiction to deal with the matter.

6. Having regard to the facts and circumstances of the case and the Scope of Section 9(1) of the Guardian and Wards Act, I am of the considered view that the relief sought by the petitioner deserves to be allowed. Today this Court allowed Tr.C.M.P.No.121 of 2017 withdrawing O.P.No.799 of 2016 filed by the respondent from the file of the Additional Family Court at Visakhapatnam, against the petitioner and transferred to the file of the Family Court at Vijayawada, Krishna District.

7. In the result, the Transfer Civil Miscellaneous Petition is allowed. G.O.P.No.801 of 2016 is withdrawn from the file of the Additional Family Court at Visakhapatnam, and transferred to the file of the Family Court at Vijayawada, Krishna District, for disposal in accordance with law. There shall be no order as to costs.

8. Consequently, Miscellaneous Petitions, if any, pending in this Transfer Civil Miscellaneous Petition, shall stand closed.

T.SUNIL CHOWDARY, J

Date: 11.04.2017
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