

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

Tr.C.M.P. No.91 of 2016

ORDER:

This petition is filed under Section 24 of C.P.C. seeking to withdraw O.P.No.288 of 2014 from the file of the Family Court-cum-IV Additional District Judge, Vijayawada, and transfer the same to the file of the Family Court, City Civil Courts at Hyderabad.

2. Heard the learned counsel for both parties.

3. A perusal of the record reveals that the marriage of the petitioner was officiated with the respondent on 07.09.2009 at A.B.M.Church, Racherla Mandal, Prakasam District, as per Christian Rites and Caste Custom. Immediately after the marriage, the petitioner joined the respondent at Racherla Village of Prakasam District to lead marital life. Due to one reason or other, disputes arose between the petitioner and respondent, therefore, the petitioner has been residing at her parents' house in Hyderabad. While things stood thus, the respondent filed O.P.No.288 of 2014 on the file of the Family Court-cum-IV Additional District Judge, Vijayawada, under Section 10(1)(i) and (ix) of the Divorce Act, 1869, for dissolution of marriage between him and the petitioner.

4. The predominant contention of the learned counsel for the petitioner is that the Family Court at Vijayawada has no territorial jurisdiction to entertain the petition.

5. The predominant contention of the learned counsel for the respondent is that the petitioner suppressed the material fact and filed the petition, therefore, the petition is not maintainable.

6. In paragraph No.3 of the affidavit, the petitioner has taken a specific stand that she has no source of income. It is the case of the respondent that he has been paying maintenance to the petitioner in view of complaint of the petitioner.

7. It is not in dispute that both the petitioner and respondent hails from Prakasam District. It is an admitted fact that the respondent has been working in Defence in the State of Assam. Whether the respondent was permanent resident of Vijayawada as on the date of filing of the petition or not is purely a disputed question of fact, which cannot be gone into while deciding the transfer petition.

8. Even as per the recitals of O.P.No.288 of 2014, the petitioner is a resident of Uppal, Hyderabad. The fact remains that the petitioner is a permanent resident of Hyderabad. As rightly pointed out by the learned counsel for the petitioner, it may not be possible for the petitioner to travel from Hyderabad to Vijayawada without the assistance of one of the male members of the family in order to prosecute O.P.No.288 of 2014. So far as the respondent is concerned, he has been staying at Assam, therefore, no prejudice would be caused to the respondent even if the petition is allowed. While deciding the petitions of this nature, the Court has to take into consideration the inconvenience likely to be caused to the parties to the proceedings, more particularly, to the wife and children.

9. As per the principle enunciated in **T.Gayatri Devi v. Dr. Tallepaneni Sreekanth¹, Rachna Kanodia v. Anuk Kanodia²** and **Sumita Singh v. Kumar Sanjay and another³**, the paramount consideration, in transfer of matrimonial cases, is the convenience of the wife.

10. 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 deserves to be allowed.

11. In the result, the Transfer Civil Miscellaneous Petition is allowed. O.P.No.288 of 2014 is withdrawn from the file of the Family Court-cum-IV Additional District Judge, Vijayawada, and transferred to the file of the Family Court, City Civil Courts at Hyderabad, for disposal in accordance with law. There shall be no order as to costs.

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

T.SUNIL CHOWDARY, J

Date: 03.04.2017

Ivd

¹ 2013 (6) ALT 42 (SC)

² 2001 (7) Supreme 96

³ AIR 2002 SC 396