

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 22.11.2018

JUDGMENT PRONOUNCED ON : 04.12.2018

CORAM:

THE HONOURABLE MR. JUSTICE R. PONGIAPPAN

Transfer CMP. No.650 of 2018 &

CMP No.16046 of 2018

Mrs. K.S. Karthikaa Petitioner / Respondent

Vs

Mr. C. Venkatachalapathy Respondent / Petitioner

PRAYER: Transfer Civil Miscellaneous Petition filed under Section 24 of Code of Civil Procedure with a prayer to withdraw the case on G.W.O.P.No.8 of 2018 on the file of Principal District Court, Krishnagiri and to transfer the same to the Additional District and Sessions Judge, Hosur.

For Petitioner : Mr.S.A. Arunkumar for
M/s C. Ramkumar

For Respondent : No appearance

O R D E R

This Transfer Civil Miscellaneous Petition filed under Section 24 of Code of Civil Procedure with a prayer to withdraw the case on G.W.O.P.No.8 of 2018 on the file of Principal District Court, Krishnagiri and to transfer the same to the Additional District and Sessions Judge, Hosur.

2. The Petitioner is the wife and the respondent is the husband. The marriage between the petitioner and the respondent was conducted on 03.07.2011 as per the Hindu Rites and Customs. Out of the wedlock, two children were born to them. After gave birth to the two children, due to the torture given by the respondent, the petitioner filed an application under Section 13 (2) of Hindu Marriage Act before the Subordinate Court, Hosur for the relief of dissolution of marriage. The said application is pending with Subordinate Court, Hosur in HMOP No. 159 of 2017.

3. In the meanwhile, the respondent filed one application against the petitioner before the Subordinate Court, Krishnagiri in HMOP No.68 of 2017. Subsequent filing of the above petition, the petitioner approached this Court for transferring the said HMOP No.68 of 2017 from the file of Principal Subordinate Court, Krishnagiri to the file of Subordinate Court, Hosur and the said application was allowed. As of now, the petition filed by the petitioner and the respondent are pending in Subordinate Court, Hosur. In the said circumstances, the respondent has filed another one application under the Guardians and Wards Act, 1890 seeking relief to give the custody of minor children. The said application is now pending with the Principal District Court, Krishnagiri in G.W.O.P. No.8 of 2018. So, the petitioner again approached this Court praying to withdraw the G.W.O.P.No.8 of 2018 pending on the file of Principal District Court, Krishnagiri and to transfer the same to the Additional District and Sessions Court, Hosur.

4. When this petition is taken up for consideration, even after printing the name of the respondent in the cause list, the respondent has not appeared before this Court either personally or through Advocate.

5. The learned Counsel who is appearing for the petitioner would contend that since the petitioner is the wife, it is very difficult to attend the Court proceedings in Krishnagiri all along the way from Hosur. In the said circumstances, eventhough, the reasons stated by the petitioner is the genuine one, this Court is having the duty to pass orders only according to the principles laid down in the law. At this juncture, this Court wants to mention here about Section 9 of Guardian and Wards Act, 1890, 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.

(2) If the application is with respect to the guardianship of the property of the minor, it may be made either to the District court having jurisdiction in the place where the minor ordinarily resides or to a District court having jurisdiction in a place where he has property.

(3) If an application with respect to the guardianship of the property of a minor is made to a District Court other than that

having jurisdiction in the place where the minor ordinarily resides, the Court may return the application if in its opinion the application would be disposed of more justly or conveniently by any other District court having jurisdiction.

The words set out in the above Section clearly shows that the application for the custody of the minor children has to be tried only in the District Court having jurisdiction in the place where the minor ordinarily resides or the District Court having jurisdiction in a place where he has property. In this petition, the question of property does not arise. But, Section 4(5) of Guardian and Wards Act contemplates that the Court means

- (a) the District court having jurisdiction to entertain an application under this Act for an order appointing or declaring a person to be a guardian; or
- (b) where a guardian has been appointed or declared in pursuance of any such application
 - (i) the Court which, or the Court of the Officer who, appointed or declared the guardian or is under this Act deemed to have appointed or declared the guardian; or
 - (ii) in any matter relating to the person of the ward the District court having jurisdiction in the place where the ward for the time being ordinarily resides; or
- (c) in respect of any proceeding transferred under section 4-A, the Court of the Officer to whom such proceeding has been transferred.

Therefore, both the provisions now referred denotes that the Court means District Court that means "Principal District Court" alone.

6. Now, the application has been filed by the petitioner seeking relief to withdraw G.W.O.P No. 8 of 2018 now pending on the file of Principal District Court and to transfer the same to the Additional District Court, Hosur. Since, the Act does not conferred any power to try such petitions in Additional District Court. Accordingly, I am of the considered view that since, the jurisdiction is vested with the District Court, the prayer sought for by the petitioner cannot be entertained. In the light of the above discussions, this application is devoid of merits and accordingly dismissed.

7. In the result, the Transfer Civil Miscellaneous Petition is dismissed. The connected miscellaneous petition is closed. No costs.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

vrn

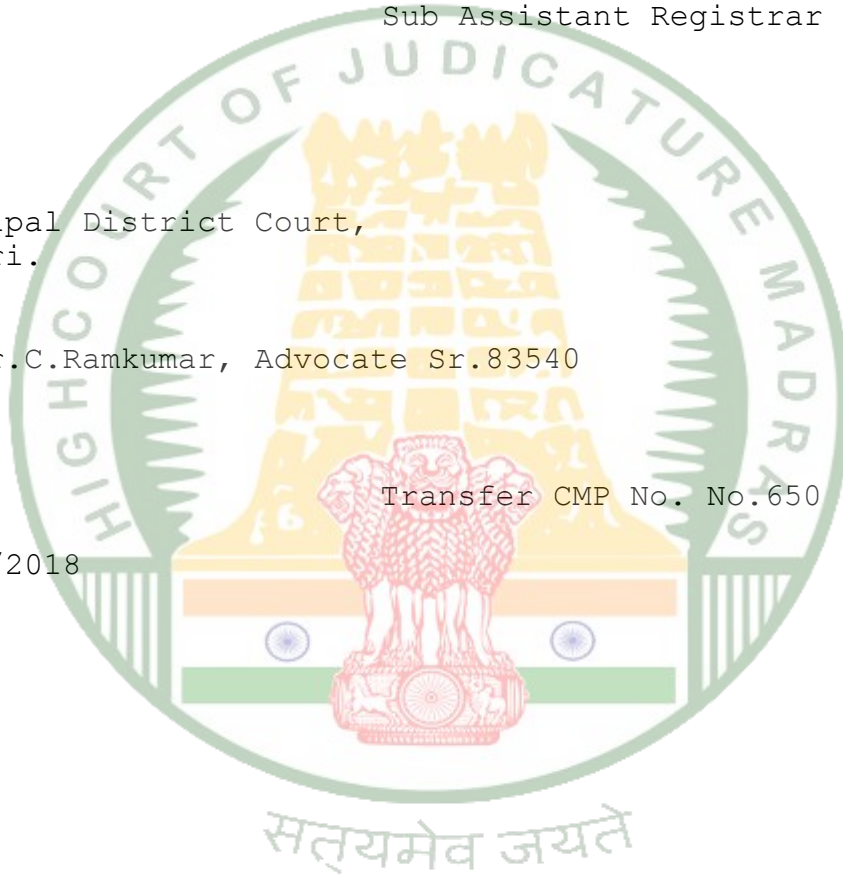
To

The Principal District Court,
Krishnagiri.

+1cc to Mr.C.Ramkumar, Advocate Sr.83540

Transfer CMP No. No.650 of 2018

srg 18/12/2018



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