



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.03.2018

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

TR.C.M.P(MD) .No.29 of 2018

and

C.M.P(MD)No.775 of 2018

P.Sendoori

... Petitioner/Respondent

Vs.

M.Murali

... Respondent/ Petitioner

PRAYER:- Transfer Civil Miscellaneous Petition filed under Section 24 of the Civil Procedure Code, 1908, praying to withdraw the F.C.G.O.P.No.9 of 2017 on the file of the Family Court, Dharmapurai and transfer the same to the file of the Family Court, Madurai.

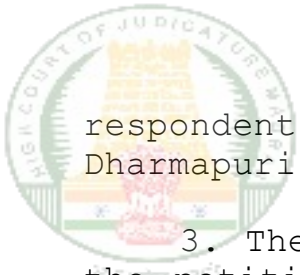
For petitioner : Mr.S.Venkatasubramaniyan

For respondent : No appearance

ORDER

This Transfer Civil Miscellaneous Petition has been filed by the petitioner / wife seeking transfer of F.C.G.O.P.No.9 of 2017 from the file of the Family Court, Dharmapurai to the file of the Family Court, Madurai.

2. It is stated in the petition that the marriage between the petitioner and the respondent was solemnized on 28.08.2010 and their marriage was a love marriage. After marriage, both of them lived happily for some time and thereafter, the respondent began to torture her for non-pregnancy. Subsequently, the petitioner gave birth to a male child on 30.01.2016 and even thereafter, there was no change in the attitude of the respondent. Since the respondent continue to torture her, the petitioner decided to dissolve the marriage and filed HMOP No.4 of 2017 on the file of the Family Court, Madurai. While so, the respondent filed HMOP No.137 of 2017 on the file of the Family Court, Dharmapuri, seeking restitution of conjugal rights. Therefore, the petitioner preferred Tr.C.M.P.No.467 of 2017 before this Court and this Court, by its order dated 09.10.2017, transferred the case from file of the Family Court, Dharmapuri to the file of the Family Court, Madurai. Now, suppressing the fact of transfer, the



respondent filed F.C.G.O.P.No.9 of 2017 before the Family Court, Dharmapuri on 27.10.2017.

3. The grievance of the petitioner is that in order to harass the petitioner, the respondent has filed the present petition at Dharmapuri. As the petitioner is residing at Madurai along with her aged parents, it would be very difficult for her to travel about 600 kms. away from her residence to attend the Court at Dharmapuri along with her child for each and every hearing. Hence, she prays for transfer of the case.

4. The learned counsel for the petitioner reiterated the averments made in the petition.

5. Though notice has been served to the respondent and his name is printed in the cause list, he did not appear either in person or through any counsel.

6. Heard the learned counsel for the petitioner and perused the materials available on record.

7. Section 9 of the Guardian and Wards Act, 1890 reads as follows:

"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."

8. As per Section 9 of the Act, the convenience of the child is paramount and therefore, the Guardianship Original Petition has to be filed only at the place where the minor child resides. But, here, in this case, it is seen that the Guardian Wards Original Petition was filed at the place where the father of the child resides. Hence, I am inclined to allow this Transfer Civil Miscellaneous Petition. Accordingly, this petition is allowed with the following directions:

i) The learned Family Court Judge, Dharmapuri, is directed to transmit the entire records in F.C.G.O.P.No.9 of 2017 to the file of the Family Court, Madurai, within a period of two weeks from the date of receipt of copy of this order.

ii) The learned Family Court Judge, Madurai, after obtaining the records on transfer, is directed to dispose of the F.C.G.O.P.No.9 of 2017 on merits and in accordance with law, as expeditiously as possible.



No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(AE)

WEB COPY

/True Copy/

Sub Assistant Registrar

To

- 1.The Judge, Family Court, Madurai.
- 2.The Judge, Family Court, Dharmapuri.

GCG

VB/JC/SAR4/10.04.2018/3P/3C

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