



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.01.2018
(Reserved on 20.07.2017)

WEB COPY

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

TR.CMP (MD) No.235 of 2015 and
MP (MD) No.1 of 2015

P.Muthulakshmi

... Petitioner

vs.

1) A.Saravana Vairava Sundar

2) P.Kumar

3) P.Sivakumar

... Respondents

Petition filed under Section 24 of the Civil Procedure Code, to withdraw and transfer the case in GWOP.No.2 of 2013 on the file of the Principal District Court, Dindigul, to the Principal District Court, Sivagangai.

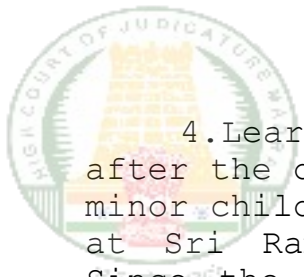
For Petitioner	: Mr.A.K.Manickam
For R1	: Mr.N.Anantha Padmanaban
For R2 & R3	: Mr.V.Sasikumar

ORDER

This Transfer Civil Miscellaneous Petition has been filed to withdraw and transfer the case in GWOP.No.2 of 2013 on the file of the Principal District Court, Dindigul, to the Principal District Court, Sivagangai.

2.Learned counsel for the petitioner would submit that the 1st respondent is son-in-law of the petitioner and respondents 2 and 3 are the sons of the petitioner who are arrayed as respondents 1 and 2 in GWOP. The 1st respondent has filed GWOP.No.2 of 2013 on the file of Principal District Court, Dindigul, to appoint him as guardian and entrust the minor S.Thiyanesh Arunachalam to him.

3.It is further submitted that marriage between the 1st respondent and petitioner's daughter namely, Bharathi was solemnized on 14.09.2008 at Sivagangai and out of the wedlock, a male child was born on 13.07.2009. Thereafter, the said Bharathi committed suicide by self-hanging on 14.05.2012 due to dowry harassment. RDO enquiry also reveals that the daughter of the petitioner committed suicide due to dowry demand and accordingly, criminal proceedings were initiated against the 1st respondent for the offences under Section 498-A, 304-B, 406 IPC and Section 4 of Dowry Prohibition Act.



4. Learned counsel for the petitioner further contended that after the death of her daughter Bharathi, the petitioner brought the minor child to Sivagangai and the child is now studying II Standard at Sri Ramana Vikass School, Edaya Melur, Sivagangai District. Since the minor child was brought to Sivagangai, it is contended that the 1st respondent ought to have filed GWOP before the competent Court at Sivagangai as per Section 9(1) of the Guardians and Wards Act, 1890 and the GWOP filed before the Principal District Court, Dindigul, is not maintainable.

5. It is also contended that the petitioner being an aged lady, finds it difficult to travel to Dindigul to attend the hearings of GWOP and further there was a threat from the 1st respondent and his family members to the petitioner and her sons and therefore, on 17.04.2015, a complaint was lodged before the Dindigul Town Police Station which has been given CSR.No.170 of 2015. In these circumstances, learned counsel for the petitioner prays this Court to allow this petition for transfer.

6. In support of his contention, learned counsel for the petitioner relied on the decisions in C.Narasaraju vs. S.Ramesh reported in 2012 (2) CTC 717, Ruchi Majoo vs. Sanjeev Majoo (Civil Appeal No.4435 of 2011 dated 13.05.2011).

7. Learned counsel for the 1st respondent contended that the suicide committed by Bharathi/wife of the 1st respondent is on her own will and volition in her parents house and the 1st respondent has no role in it. After the demise of the wife, when the minor child S.Thiyanesh Arunachalam was under the care and custody of the 1st respondent/father, the elder brother of the deceased Bharathi who was Inspector of Police at that time, got custody of the minor child forcibly with the help of department officials and in fact, the said forcible custody was taken without the knowledge of the revision petitioner. Despite repeated requests, the child was not handed over to the 1st respondent/natural guardian. Hence, the 1st respondent filed the above said GWOP for custody of the child.

8. Learned counsel for the 1st respondent further contended that temporary residence of minors under compulsion or force of circumstances cannot be regarded as their ordinary place of residence for the purpose of determination of jurisdiction of the Court and therefore, GWOP.No.2 of 2013 filed by the 1st respondent before the Principal District Court, Dindigul, is maintainable and hence, this transfer petition to transfer the GWOP to the Principal District Court, Sivagangai, is liable to be dismissed.

9. In support of the above contention, learned counsel for the 1st respondent relied on the following judgments:-

i) Sandhiya vs. D.Gunasekaran reported in (2011) 2 MLJ 796.

ii) Bhagyalakshmi and another vs. K.Narayana Rao reported in AIR



10. Heard the learned counsel for the petitioner as well as the respondents and perused the materials available on record.

11. Perusal of records shows after the mother committed suicide by self-hanging, the minor child was brought by the maternal relations of the child to Sivagangai and it is stated that the child is now studying II Standard at Sri Ramana Vikass School, Edaya Melur, Sivagangai District. It is pertinent to note that pursuant to the complaint of dowry harassment given by the brother of the deceased Bharathi against the 1st respondent, the 1st respondent who is the husband of the deceased Bharathi, has been charge sheeted for the offences under Section 498-A, 304-B, 406 IPC and Section 4 of Dowry Prohibition Act and in the charge sheet, the 1st respondent has been arrayed as first accused and criminal proceedings are pending against the 1st respondent. In such situation, the word 'ordinary residence' as per Section 9(1) of the Guardians and Wards Act, 1890 which means the minor's 'actual residence, should be construed as the place of the revision petitioner. Further, since the minor child is studying in a school at Sivagangai, in the interest and welfare of the minor child, it will be appropriate to transfer GWOP from Dindigul to Sivagangai. Thus, the judgments relied on by the learned counsel for the petitioner are applicable to the present case and judgments cited by the 1st respondent are inapposite to the facts of this case, as the plea of forcible custody from the 1st respondent is not established.

12. In the result, GWOP.No.2 of 2013 on the file of the Principal District Court, Dindigul, is ordered to be transferred to the Principal District Court, Sivagangai, within a period of four weeks from the date of receipt of a copy of this order.

This Transfer Civil Miscellaneous Petition is allowed accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Crl.side)

/True Copy/

Sub Assistant Registrar

To

- 1) The Principal District Judge, Sivagangai.
- 2) The Principal District Judge, Dindigul.

+ 1 CC TO Mr.A.K.MANICKAM, ADVOCATE IN SR No. 44527

BALA

TE/JC/SAR-3 : 06/02/2018 : 3P/4C