



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.10.2018

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THE HONOURABLE MR. JUSTICE G.R.SWAMINATHAN

Tr.C.M.P. (MD) .No.201 of 2018

and

C.M.P. (MD) .No.4849 of 2018

Krishnapriya

.. Petitioner

Vs.

K.B.Aravindan

.. Respondent

PRAYER: This Transfer Civil Miscellaneous Petition is filed under Section 24 of HMOP ACT, to withdraw the G.W.O.P.No.286 of 2018 from Family Court, Coimbatore and transfer the same to Family Court, Madurai.

For Petitioner : Mr.K.Viralinathan

For Respondent : Mr.C.S.Ramamoorthy

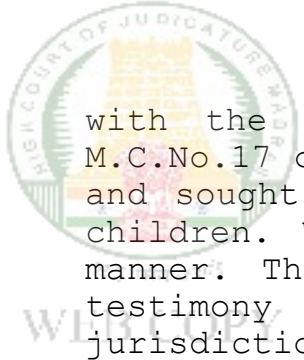
ORDER

The petitioner got married to the respondent on 16.09.2005 at Coimbatore. Two children were born through the said wedlock. The marital relationship between the parties appears to have come under strain. That necessitated filing of H.M.O.P.No.755 of 2014 by the respondent herein before the Family Court, Coimbatore. The petitioner herein filed Tr.C.M.P.No.352 of 2014 and by order dated 04.06.2015, the Original Petition was transferred to the file of the Sub Court, Tirumangalam. Thereafter, the matter was amicably resolved in Lok Adalat on 22.01.2018. But, it appears that the petitioner herein did not go back to her husband.

2.As already pointed out two children were born to the petitioner through the said wedlock. The elder son namely, Ajil is with the respondent. The younger son namely, Anuj is with the petitioner. Seeking guardianship and custody of the younger son, the respondent herein filed G.W.O.P.No.286 of 2018 before the Additional Family Court, Coimbatore. Seeking transfer of the said G.W.O.P., this Transfer Civil Miscellaneous Petition has been filed.

3.Heard the learned counsel on either side.

4.The learned counsel appearing of the respondent raised very many contentions. He would seriously question the very character and conduct of the petitioner herein. He would submit that even though in Lok Adalat, the petitioner agreed to re-join her husband along



with the second son Anuj, she has not done so. She had filed M.C.No.17 of 2014 before the jurisdictional Magistrate, Tirumangalam and sought maintenance not only for herself, but also for her two children. Witnesses examined on her side have deposed in a nasty manner. The Magistrate has expressed shock and surprise over the testimony given by P.W.4-Joseph. By order dated 26.09.2018, the jurisdictional Magistrate, Tirumangalam had granted maintenance only in favour of the second son namely, Anuj and dismissed the Maintenance Petition as far as the petitioner herein is concerned. Questioning the same, the respondent herein has moved revisional court and since no appearance was entered on behalf of the petitioner representing the child, the revisional court has appointed one Mr.Muthu Ramasubramanian as a Court guardian. The learned counsel appearing for the respondent would therefore submit that the petitioner herein has lost her locus standi even to apply for transfer of G.W.O.P.

5. He also pointed out that since G.W.O.P has been instituted before the Additional Family Court, Coimbatore, this Transfer Civil Miscellaneous Petition will lie only before the Princial Seat of this Court not before this Madurai Bench.

6. Another major contention raised by the learned counsel for the respondent is that the respondent has also filed H.M.O.P.No.284 of 2018 before the Family Court, Coimbatore and that the petitioner herein is attending the said case. He pointed out that the petitioner cannot ask for a selective transfer. In as much as she has not sought transfer of H.M.O.P.284 of 2018, he would characterize the filing of this transfer petition as lacking in bonafides. The learned counsel for the respondent wanted this Court to dismiss this Transfer Civil Miscellaneous Petition as not maintainable.

7. After careful consideration of the contentions raised on the side of the respondent this Court is of the view that the Transfer Civil Miscellaneous Petition has to be allowed.

8. Admittedly, two children were born to the petitioner through the said wedlock with the respondent. The elder child is with the respondent. The younger son namely Anuj is with the petitioner. The petitioner is based in Madurai. Subject matter of this Transfer Civil Miscellaneous Petition is a guardianship Original Petition. It is well settled that in matters concerning guardianship and custody of children the place where the children residewould be taken into consideration for fixing the territorial jurisdiction of the court. Therefore, the Family Court, Madurai would not only have the territorial jurisdiction to try G.W.O.P filed by the husband, but also it would suit the convenience of the child. This Court primarily concerns of convenience and well being of the child . It would only be in the convenience of things, to transfer the case from the file of the Family Court, Coimbatore to the file of the Family Court, Madurai. In such view of the matter, it is not necessary to consider the other contentions raised by the learned counsel for the respondent assailing the character and conduct of the petitioner herein.



9. In view of in the decision reported in 2008(7) MLJ 012 (InE.Mari Oliviya Vs. E.Jsohua Milton) this Court has the jurisdiction to entertain this transfer miscellaneous petition even though the G.W.O.P has been instituted in Coimbatore. As held by the above decision, the Transfer Petition is very much maintainable.

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10. It has been brought to my notice that H.M.O.P.No.284 of 2018 has been instituted by the respondent before the Family Court, Coimbatore. Even though no Transfer Petition has been filed, the learned counsel for the petitioner states that the petitioner received summon in H.M.O.P.No.284 of 2018 now only. He is taking steps to file a Transfer Petition in this regard also.

11. In the result, this Transfer Civil Miscellaneous Petition is allowed. No costs. Consequently, connected C.M.P.(MD) No.4849 of 2018 is closed.

Sd/-

Assistant Registrar(T&P)

/True Copy/

Sub Assistant Registrar(CS-II)

To

1.The Family Court, Madurai.

2.The Family Court, Coimbatore

+1cc to Mr.C.S.Ramamoorthy Advocate in SR.No.89536

+1cc to M/s.V.P.Rajan Advocate in SR.No.89572

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