

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

TRANSFER C.M.P. No.397 OF 2016

ORDER:

The Transfer C.M.P., under Section 24 of the Code of Civil Procedure, 1908 (for short 'Code'), is filed by the petitioner - wife to withdraw G.O.P. No.728 of 2016 from the file of Judge, II Additional Family Court, Ranga Reddy District at Kukatpally, and transfer the same to the Judge, Family Court at Vizianagaram.

2. Respondent - husband filed petition - G.O.P. No.728 of 2016 under Sections 7, 10 and 25 of the Guardians and Wards Act, 1890 (for short 'Act, 1890') to appoint him being father as guardian to male ward, by name Madduri Karthik, and to direct the petitioner herein to deliver the custody of the boy to him making an allegation before the trial Court that the boy was forcibly taken away by the petitioner herein on 14.10.2013 from his custody and later informed to him.

3. Heard Ms. T.V. Sridevi, learned counsel for the petitioner, and Sri V.S.R. Anjaneyulu, learned counsel for the respondent.

4. Perused the material on record. In paragraph No.16 of the petition in G.O.P., the respondent - husband has furnished the particulars of minor boy in the shape of form as required under Section 10 of the Act, 1890, wherein as against column (a) regarding 'ordinary residence' of minor child is shown as Plot Nos.165-168, Sai Residence, Phase-I, Bhagyanagar Colony, Opposite KPHB,

Hyderabad. Further, section 9 of the Act, 1890, deals with jurisdiction to entertain application. According to sub-section 1 of Section 9, if the application is with respect to the guardianship of the minor, it may be made either to the District Court having jurisdiction in the place where the minor ordinarily resides.

5. The solitary test for determining the jurisdiction of the Court under Section 9 of the Act, 1890 is the 'ordinary residence' of the minor as held in **Ruchi Majoo v. Sanjeev Majoo**¹. The expression 'ordinarily resides' signifies something more than a temporary residence. Even though the period of such temporary residence may be considerable, the place where the minor generally resides and would be expected to reside but for special circumstances may be taken to be the place denoting a place where the minor ordinarily resides as held in **Jagdish Chandra Gupta v. Vimla Gupta**².

6. As the Transfer C.M.P. is filed under Section 24 of the Code to withdraw G.O.P. from the Court at Kukatpally of Ranga Reddy District on the ground that the said Court lacks territorial jurisdiction. But, such question cannot be decided in a petition filed under Section 24 of the Code. However, liberty is given to the petitioner - wife herein to file appropriate application before the Judge, II Additional Family Court, Ranga Reddy District at Kukatpally, and determine the territorial jurisdiction within two weeks after filing such application

¹. AIR 2011 SC 1952

². AIR 2003 All. 317

before it under Order XIV, Rule 2 of the Code, trying the same as preliminary issue.

7. With the aforesaid observation, the present Transfer C.M.P. is disposed of. However, there shall be no order as to costs.

Consequently, Miscellaneous Petitions, if any, pending in the present Transfer C.M.P. stand closed.

October 31, 2018
Mgr

M. SATYANARAYANA MURTHY, J

