

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

TRANSFER MISCELLANEOUS PETITION No.148 OF 2018

ORDER:

This transfer civil miscellaneous petition, under Section 24 of the Code of Civil Procedure, 1908 (for short 'CPC') is filed to withdraw O.P. No.17 of 2017 on the file of the Senior Civil Judge, Suryapet, Suryapet District and transfer the same to the Court of Senior Civil Judge, Warangal, Hanamkonda, on two grounds.

The first ground is that the petitioner filed C.C. No.540 of 2010, C.C. No.3 of 2016, M.C. No.4 of 2015 and D.V.C. No.4 of 2015 before the Judicial Magistrate of First Class, Parkal and they are pending. The respondent allegedly filed O.P. No.17 of 2017 before the Senior Civil Judge, Suryapet, Suryapet District, after long lapse of time, for dissolution of the marriage. Though both criminal cases are pending by the time, the respondent filed the O.P. and thereby it is difficult for her to appear before the court at Suryapet covering journey distance of 150 kilometers between Hanmakonda and Suryapet, and the other ground is, the Court of Senior Civil Judge, Suryapet, has no territorial jurisdiction to try and dispose of O.P. No.17 of 2017.

At the stage of admission, Sri P.Mehar Srinivasa Rao, learned counsel for the petitioner, reiterated the contentions urged in the petition and contended that the petitioner intentionally filed the O.P. before the Court of Senior Civil Judge, Suryapet, to harass the petitioner and to make her to travel for more than 150 kilometers on the date of adjournments and when the Court at suryapet lacks territorial jurisdiction, the court can withdraw and

transfer the same to the Senior Civil Judge, Warangal at Hanamkonda.

It is an admitted fact that C.C. No.540 of 2010, C.C. No.3 of 2016, M.C. No.4 of 2015 and D.V.C. No.4 of 2015 are pending before the Judicial Magistrate of First Class, Parkal, since the year 2010 and the respondent filed O.P. No.17 of 2017 under Section 13(1)(ia)(ib) of Hindu Marriage Act, before the Court of Senior Civil Judge, Suryapet.

The first and foremost contention of the counsel for the petitioner is that it is difficult for her to appear before the Court of Senior Civil Judge, Suryapet, undertaking journey covering distance more than 150 kilometers, on every date of adjournment.

The trial procedure in the HMOP is governed by CPC and the Rules framed under Hindu Marriage Act and hence she is not required to appear on every date of adjournment like cases pending on the file of Family Courts, since Family Court cases are governed by the rules framed under the Family Courts Act.

Therefore, the contention that it is difficult for her to appear before the Court of Senior Civil Judge, at Suryapet, in connection with O.P. No.17 of 2017, on every date of adjournment is baseless, and at best, she is required to appear before the Court on the date when reconciliation proceedings were taken up by the Court or when her cross-examination is required to be recorded or on any other day as directed by the Court, for her appearance. Hence, the difficulty expressed by the petitioner is not ground.

The other contention of the counsel for the petitioner is that the Court of Senior Civil Judge, at suryapet lacks territorial

jurisdiction. As per the allegation made at paragraph 8 in the O.P., cause of action for the petition firstly arose on 21.02.1981 at Rayaparthi Village of Parkal Mandal, Warangal District when and where the marriage of the petitioner and respondent was solemnised, partly at Mamunur Village and Madnal, Warangal District and finally at Thirmalagiri Village and Mandal, Suryapet District, where the petitioner and respondent lastly resided together.

Therefore, the O.P. can be filed at the place where their marriage was solemnised or where they lived together lastly.

Jurisdiction is a question of fact and law. While deciding the application filed under Section 24 of CPC, this court cannot exercise power under Rule 2(2)(b) of Order XIV of CPC to decide the question of jurisdiction. Hence, it is left open to the petitioner to file appropriate application before the Senior Civil Judge, under Rule 2(2)(b) of Order XIV of CPC in the event of filing of such application the Senior Civil Judge, is directed to decide the application and pass appropriate order.

Hence, on the ground of alleged lack of territorial jurisdiction, the O.P. cannot be withdrawn and transferred to the Court of Senior Civil Judge at Warangal

In view of the facts and circumstances of the case, the Senior Civil Judge, Warangal, is directed not to insist personal appearance of the petitioner on every date of adjournment in connection with O.P. No.17 of 2017, as it is not mandatory in the petitions filed under Section 13(1)(ia) (ib) of Hindu Marriage Act and the procedure in HMOP is governed by CPC, as long as her

counsel representing her except on the dates of reconciliation proceedings and recording of evidence and whenever she is required to appear before the court, the respondent be directed to pay expenses for her traveling and other incidental expenses not only to the petitioner but also to the person who accompanies her, in terms of Order XXV of CPC and this order will not preclude the Senior Civil Judge, Suryapet, Suryapet District, to any order in the event her counsel failure to representing the case, in accordance with law.

With the above direction, the CRP is disposed of.

Consequently, miscellaneous petitions, if any, pending shall stand closed.

Date:15.03.2018
BV

M.SATYANARAYANA MURTHY, J

