

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

Tr.C.M.P.No.4 of 2017

ORDER:

This petition is filed under Section 24 of C.P.C. seeking to withdraw F.C.O.P.No.1219 of 2016 from the file of the Family Court at Visakhapatnam and transfer the same to the file of the Court of the Senior Civil Judge, Sompeta, Srikakulam District.

2. Heard the learned counsel for both parties.

3. A perusal of the record reveals that the marriage of the petitioner was performed with the respondent on 15.10.2004 at Sri Sri Sri Venugopalaswamy vari Temple at Chinnabadam Village, Palasa Mandal, Srikakulam District, as per Hindu Rites and Caste Customs. Immediately after the marriage, the petitioner joined the respondent to lead marital life. Out of lawful wedlock, the petitioner and respondent were blessed with two children. For one reason or other, disputes arose between the petitioner and respondent; therefore, the petitioner has been residing at her parents' house in Devana Althada Village, Kasibugga Mandal, Srikakulam District. The petitioner filed M.C.No.23 of 2016, under Section 125 Cr.P.C., on the file of the Court of the Judicial Magistrate of First Class, Palasa, against the respondent seeking maintenance. The respondent is facing trial in C.C.No.188 of 2016 on the file of the Court of the Judicial Magistrate of First Class, Palasa, for the offence punishable under Section 498-A I.P.C. While things stood thus, the respondent filed F.C.O.P.No.1219 of 2016, under Section 9 of Hindu Marriage Act, on the file of the

Family Court at Visakhapatnam, against the petitioner for restitution of conjugal rights.

4. It is the case of the petitioner that she is facing much difficulty to travel from Palasa to Visakhapatnam in order to prosecute F.C.O.P.No.1219 of 2016. Invariably, the respondent has to attend the Court of Judicial Magistrate of First Class, Palasa, in view of pendency of C.C.No.188 of 2016 and M.C.No.23 of 2016.

5. While deciding the petitions of this nature, the Court has to take into consideration the inconvenience likely to be caused to the parties to the proceedings, more particularly, to the wife and children. As per the principle enunciated in **T.Gayatri Devi v. Dr. Tallepaneni Sreekanth**¹, **Rachna Kanodia v. Anuk Kanodia**² and **Sumita Singh v. Kumar Sanjay and another**³, the paramount consideration, in transfer of matrimonial cases, is the convenience of the wife.

6. Having regard to the facts and circumstances of the case and also the principle enunciated in the cases cited supra, I am of the considered view that the relief sought by the petitioner deserves to be granted.

7. Learned counsel for the respondent submitted that the presence of the respondent may be dispensed with before the Court of the Senior Civil Judge, Sompeta, on each and every date of adjournment.

¹ 2013 (6) ALT 42 (SC)

² 2001 (7) Supreme 96

³ AIR 2002 SC 396

8. In the result, the Transfer Civil Miscellaneous Petition is allowed. F.C.O.P.No.1219 of 2016 is withdrawn from the file of the Family Court at Visakhapatnam and transferred to the file of the Court of the Senior Civil Judge, Sompeta, Srikakulam District, for disposal in accordance with law. The presence of the respondent in connection with F.C.O.P.No.1219 of 2016 on the file of the Court of the Senior Civil Judge, Sompeta, is dispensed with on each and every date of adjournment. However, he shall appear before the trial Court as and when his presence is so required. There shall be no order as to costs.

9. Consequently, Miscellaneous Petitions, if any, pending in this Transfer Civil Miscellaneous Petition shall stand closed.

Date: 08.10.2018
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T.SUNIL CHOWDARY, J

