THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

Tr.C.M.P. NO.235 OF 2017

ORDER:

This transfer civil miscellaneous petition is filed under Section 24 C.P.C to withdraw F.C.O.P.No.2181 of 2016 pending on the file of Judge, Family Court, Ranga Reddy District and transfer the same to Judge, Family Court, Nellore District.

Petitioners 1 & 2 are the grandparents and petitioners 3 & 4 are the aunts, whereas, the respondent is the father and natural guardian of the minor wards. The ground for withdrawal of F.C.O.P.No.2181 of 2016 pending on the file of Judge, Family Court, Ranga Reddy District and transfer the same to Judge, Family Court, Nellore District is that, grandparents of the minor wards are residing at Yellore, Nellore District, whereas, F.C.O.P.No.2181 of 2016 is filed before Family Court, Ranga Reddy District is having no territorial jurisdiction, in view of Section 9 of Guards and Wards Act, 1980.

During hearing, Smt. K. Pallavi, learned counsel for the petitioner reiterated the contention that, in view of Section 9 of Guards and Wards Act, the petition shall be filed at the place where the minor children are residing ordinarily.

No doubt, F.C.O.P.No.2181 of 2016 was filed before Family Court, Ranga Reddy District for custody of the minor children, where the minor children are residing ordinarily. But, as per the allegations made in the petition, they are residing with the respondent till they were taken forcibly by the grandparents, two

days prior to filing the petition for custody and they were not returned by the grandparents. Therefore, the question of ordinary residence of minor wards is a question of fact to be decided by the Trial Court only during trial. At best, the Court can frame an issue by exercising power under Order XIV Rule 1 C.P.C. But, this Court by exercising power under Section 24 C.P.C cannot decide the territorial jurisdiction of the Court, in view of the absence of contention about ordinary residence of minor wards. Therefore, it is left open to these petitioners to file appropriate application under Order XIV Rule 2 C.P.C before the Judge, Family Court, Ranga Reddy District to frame appropriate issue with regard to territorial jurisdiction of the Court and to try the same as preliminary issue, subject to permissibility under Order XIV Rule 2(2) C.P.C. The Judge, Family Court, Ranga Reddy District is directed to dispose of such application, if any filed, as expeditiously as possible, in any event within a period of two months.

In the result, transfer civil miscellaneous petition is disposed of.

Consequently, miscellaneous applications pending if any, shall also stand dismissed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date:06.11.2018

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