

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

Tr.C.M.P.No.680 of 2016

ORDER:

This petition is filed under Section 24 of C.P.C. seeking to withdraw G.W.O.P.No.442 of 2016 from the file of the Court of the Principal District Judge at Nalgonda, and transfer the same to the file of the Family Court at Khammam.

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 25.04.2002 at Khammam, as per Hindu Rites and Caste Custom. 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. The petitioner has been residing at her parents' house in Khammam along with her children due to misunderstandings between her and the respondent. While things stood thus, the respondent filed G.W.O.P.No.442 of 2016 on the file of the Court of the Principal District Judge at Nalgonda to direct the petitioner to handover the custody of the minor children to him.

4. In order to appreciate the rival contentions, it is not out of place to extract hereunder paragraph No.19 of G.W.O.P.No.442 of 2016:

“19. Cause of action for the petition on 19.12.2015 when the respondent left the matrimonial home without consent of the petitioner along with the children, on 27.02.2016 when the petitioner got issued a legal notice and on 08.03.2016 the respondent given reply and said

regarding cases which are filed with false averments and in all subsequent days.”

A perusal of the above paragraph clearly demonstrates that the children are with the petitioner.

5. Section 9(1) of the Guardians and Wards Act reads as follows:

9. Court having jurisdiction to entertain application:-

(1) If the application is with respect to the guardianship of the person of the minor, it shall be made to the District Court having Jurisdiction in the place where the minor ordinarily resides.

A perusal of Section 9(1), at a glance, mandates that a person, who seeks custody of a ward, has to approach the District Court within whose territorial jurisdiction the ward is ordinarily residing. In the instant case, even as per the averments made in G.W.O.P.No.442 of 2016, the minor children are residing in Khammam along with the petitioner, as on the date of filing of the petition. Therefore, the Family Court at Khammam is having the jurisdiction to deal with the matter.

6. Having regard to the facts and circumstances of the case and the Scope of Section 9(1) of the Guardians and Wards Act, this Court is of the considered view that the relief sought by the petitioner deserves to be allowed.

7. In the result, the Transfer Civil Miscellaneous Petition is allowed. G.W.O.P.No.442 of 2016 is withdrawn from the file of the Court of the Principal District Judge at Nalgonda and transferred to the file of the Family Court at Khammam for disposal in accordance with law. There shall be no order as to costs.

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

T.SUNIL CHOWDARY, J

Date: 05.10.2018
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