

THE HONORABLE SRI JUSTICE M. SATYANARAYANA MURTHY

Tr.C.M.P.No.710 of 2018

ORDER

This petition under Section 24 of C.P.C., is filed to withdraw G.W.O.P.No.1378 of 2013 pending on the file of XV Additional District and Sessions Judge, Kukatpally at Balanagar, Ranga Reddy District, and transfer the same to the Court of the Judge, Family Court at Warangal, Warangal District, on the ground that the first petitioner is aged 55 years and suffering from Asthama, and therefore, he is not able to appear before the Court along with the child i.e., second petitioner, aged 8 years, and that there was an undertaking-cum-declaration-cum-receipt dated 16.06.2015 between the parties duly affixing their thumb impression on the document incorporating certain conditions about the custody etc. Now the second petitioner is in the custody of the first petitioner at Warangal and therefore, he requested to withdraw and transfer the said OP., to the Court at Warangal.

2. During hearing, learned counsel for the petitioners has reiterated the grounds urged in the petition while contending that after the death of the daughter of first petitioner, the respondent married again and blessed with children and that there is every threat to the life of the child in case the child is directed to be produced before the Court of XV Additional District and Sessions Judge, Kukatpally at Balanagar, and therefore, he requested to withdraw and transfer the said O.P.

3. One of the contentions raised before this Court is that according to Section 9 of Guardians and Wards Act, 1890, 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. The minor was entrusted to the first petitioner and now, she is under his custody and the petition should be filed only before the competent Court at Warangal and not before the Court at Kukatpally. No doubt, there is no dispute about the territorial jurisdiction under Section 9 of Guardians and Wards Act, 1890, where the petition is to be filed. But the scope of Section 24 CPC is limited and only in the circumstances narrated therein, this Court can exercise such power. But, the issue of jurisdiction is concerned, it is for the trial Court to decide whether the Court at Kukatpally, is having jurisdiction to try the said O.P., filed under Section 6 of the Hindu Minority and Guardianship Act, 1956, to claim the custody of minor child by her father, the respondent herein. Therefore, the trial Court is directed to frame appropriate issue with regard to the territorial jurisdiction, if law permits, and try the same as preliminary issue by exercising power under Order 14 CPC. Therefore, on the ground of lack of jurisdiction, the petition cannot be withdrawn and transferred.

4. The other ground is that due to old age and Asthama, the first petitioner is unable to produce the minor child, who is school going, before the Court. This ground is not sufficient because the first petitioner is aged 55 years by the date of filing the present petition

and the main petition is pending before the trial Court for the last 5 years. When the first petitioner is able to produce the child without any inconvenience for the last 5 years, the new ground raised before this Court is that he is suffering from Asthama, which is not at all sufficient. However, the petitioner may file an application before the trial Court to modify the order, if any, passed with reference to visitation rights of the respondent. But, on that ground, the petition cannot be withdrawn and transferred. Hence, none of the grounds are sufficient to exercise power under Section 24 CPC to withdraw and transfer the said OP., and consequently, the petition is liable to be dismissed.

5. In the result, the Transfer Civil Miscellaneous Petition is dismissed, with liberty to the first petitioner to file appropriate application before the trial Court to frame an issue regarding territorial jurisdiction and try the same as preliminary issue subject to permissibility and for modification of any order passed granting visitation rights to the respondent subject to permissible under law. No order as to costs. Miscellaneous petitions, if any, pending in this petition, shall stand dismissed.

M. SATYANARAYANA MURTHY, J

12th November, 2018

sj