

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

TRANSFER C.M.P.No. 870 OF 2017

ORDER:

This transfer civil miscellaneous petition under Section 24 of the Code of Civil Procedure (for short, 'C.P.C.') is filed to withdraw G.W.OP.No.662 of 20178, pending on the file of Family Court, Vijayawada and transfer the same to the XV Additional District Judge-cum-II Additional Family Court, R.R. District at Kukatpally mainly on the ground that the Judge, Family Court, Vijayawada had no territorial jurisdiction and that the other grounds raised by the petitioner are not relevant to decide the real controversy.

Notice on respondent was served and filed proof of service, but none appeared.

The respondent/petitioner, who is father of the minor children and husband of the petitioner/respondent, filed petition under Sections 7 and 10 of the Guardians and Wards Act read with Section 8(5) of the Hindu Minority and Guardianship Act claiming custody of the children.

Section 7 of the Guardians and Wards Act deals with the power of the Court to make an order as to guardianship and where the Court is satisfied that it is for the welfare of a minor that an order should be made, appointing a guardian of his person or property or both, or declaring a person to be such a guardian the Court may pass an order, an order under this section shall imply the removal of any guardian who has not been appointed by will or other instrument or appointed or declared by the Court or where a guardian has been appointed by will or other instrument or appointed or declared by the Court, an order under

this section appointing or declaring another person to be guardian in his stead shall not be made until the powers of the guardian appointed or declared as aforesaid have ceased under the provisions of the Act.

Section 10 of the Guardians and Wards Act deals with form of application. The respondent being a father, is a legal guardian as per Section 4 of the Guardians and Wards Act. The minor children are with the custody of the petitioner/respondent as per the admission made in GWOP at para 3. Therefore, it is an undisputed fact that the minor children are in the custody of the petitioner, who is the mother.

Section 9 of the Guardians and Wards Act deals with the jurisdiction of the Court to entertain the application and 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.

Here in the present case, the minor is with the petitioner/mother and residing at Door No.14-7-23, Gopalarao Street, Hanumanpeta, Vijayawada as per the long cause title of the petition in GWOP. Now, learned counsel for the petitioner contended that wrong address was mentioned in the petition and that the petitioner is residing at Miyapur, Ranga Reddy District and that she filed D.V.C etc. within the territorial jurisdictional limits of Ranga Reddy District. When the respondent/petitioner asserting that the petitioner/respondent is residing at Door No.14-7-23, Gopalarao Street, Hanumanpeta, Vijayawada, this Court cannot decide territorial jurisdiction while exercising power under Section 24 C.P.C. along with the children having custody over the minor children. When the place of residence of the

petitioner is in dispute, it is appropriate to direct the Judge, Family Court, Vijayawada to decide the territorial jurisdiction with reference to Section 9 of the Guardians and Wards Act after affording opportunity to both parties within three months from the date of receipt of a copy of this order in accordance with law. If the Court below finds that the Court has no territorial jurisdiction, pass appropriate orders exercising power under Order VII Rule 10 and 10(a) C.P.C.

With the above direction, the Tr.C.M.P. is disposed of directing the Judge, Family Court, Vijayawada to decide the territorial jurisdiction with reference to Section 9 of the Guardians and Wards Act after affording opportunity to both parties within three months from the date of receipt of a copy of this order in accordance with law. If the Court below finds that the Court has no territorial jurisdiction, pass appropriate orders exercising power under Order VII Rule 10 and 10(a) C.P.C. There shall no order as to costs.

Pending miscellaneous petitions, if any, shall stand dismissed in consequence.

M.SATYANARAYANA MURTHY, J.

Date: 02.02.2018
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