

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.10.2019

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Tr.C.M.P.Nos.418 and 419 of 2019 and
C.M.P.Nos.11954 and 11960 of 2019

C.Elaveni Arun ...Petitioner in both the petitions
/Respondent
Vs.

Arun Prakash ... Respondent in both the petitions
/Petitioner

Prayer in Tr.C.M.P.No.418 of 2019

Transfer Civil Miscellaneous Petition is filed under Section 24 of the Code of Civil Procedure, to withdraw the case in Guardian G.W.O.P.No.13 of 2019 on the file of the District Court, Chengalpeta and transfer the same to VI Additional Family Court, Chennai where H.M.O.P.No.2016 of 2019 filed by the petitioner / wife is pending and be tried in accordance with law by the transferee Court.

Prayer in Tr.C.M.P.No.419 of 2019

Transfer Civil Miscellaneous Petition is filed under Section 24 of the Code of Civil Procedure, to withdraw the case in H.M.O.P.No.848 of 2018 on the file of the Sub Court, Tambaram and transfer the same to VI Additional Family Court, Chennai where H.M.O.P.No.2016 of 2019 filed by the petitioner/wife is pending and be tried in accordance with law by the Transferee Court.

For Petitioner : Mr.S.Vasu

For Respondent : Mr.V.Vijayshankar

COMMON ORDER

The present Transfer Civil Miscellaneous Petitions are filed under Section 24 of the Code of Civil Procedure, to withdraw the case in G.W.O.P.No.13 of 2019 on the file of the District Court, Chengalpet and H.M.O.P.No.848 of 2018 on the file of the Sub Court, Tambaram and transfer the same to VI Additional Family Court, Chennai where H.M.O.P.No.2016 of 2019 filed by the petitioner / wife is pending and be tried in accordance with law by the transferee Court.

2. The case of the petitioner / wife is that she got married to the respondent on 5.12.2016 at Sri. C.K.Mahal, Sivagangai District, as per Hindu Rites and Customs. Out of the wedlock, a male child namely, Nikith was born on 19.07.2019. The matrimonial dispute arose between the petitioner and the respondent after the child had born, which let to the bigger dispute, wherein the respondent / husband and petitioner / wife had separated.

3. The case of the respondent/husband is that the petitioner did not inform him regarding hair tonsure to his son and they themselves had planned everything and there was no happy married life after that.

4. The learned counsel for the petitioner / wife submits that the petitioner is residing at Adyar and she is taking care of the child aged one year and five months. He would further submit that the respondent / husband has filed Guardians and Wards Original Petition before the District Court, Chengalpet seeking custody of the child. Further, as a counter blast to the petition, viz., H.M.O.P.No.2016 of 2018 filed by the petitioner seeking decree of divorce, which is pending before the learned 6th Additional Judge, Family Court, Chennai, the respondent filed a petition, viz., H.M.O.P.No.848 of 2018 for restitution of conjugal rights before the Sub Court, Tambaram. The learned counsel for the petitioner also contended that the petitioner is finding it difficult to travel to Chengalpet along with the child and if the matter is transferred, it will be convenient for her to attend the same.

5. The learned counsel for the petitioner also submitted that the petitioner seeks withdrawal of the petition, which is pending before the Chengalpet Court and Sub Court, Tambaram and seeks to transfer the same to any one of the court at Chennai. In the meanwhile, the petitioner /wife got transferred to Alangudi Branch at Sivagangai District and now, she is staying in Sivagangai and it will not be possible for her to travel such a long distance.

6. The learned counsel for the respondent / husband contended that G.W.O.P.No.13 of 2019 was filed by the respondent because the petitioner did not even show the child to the respondent / husband, who is fond of his son. On earlier occasion, this Court directed the petitioner / wife to produce the child before the Mediation centre and as per the direction, child was shown to the respondent and father was able to speak with his son for half an hour, at that point of time, the child was very calm and playing with the respondent / husband.

7. The learned counsel for the respondent submits that a direction may be issued to the court concerned to dispose of the guardianship and wards petition within a time frame to be fixed by this court, to enable him to atleast have a visitation rights, as an interim measure, when the matter is pending adjudication in the concerned court. The learned counsel for the respondent represented that only to stall the proceedings and not to grant visitation of the child to the respondent, the petitioner has wantonly taken transfer to Kandanur.

8. Heard the learned counsel on either side and perused the documents placed on record.

9. Considering the facts and circumstances of the case and taking into account of the fact that the respondent / father also has to visit the child, in the interest of justice, it may be proper for the parties to appear before the learned VI Additional Judge, Family Court, Chennai. Accordingly, the parties are directed to appear before the learned VI Additional Judge, Family Court, Chennai and the H.M.O.P.No.878 of 2018 pending on the file of Sub Court, Tambaram and G.W.O.P.No.13 of 2019 pending on the file of District Court, Chengalpet are to be transferred to the learned VI Additional Judge, Family Court, Chennai within a period of six weeks from the date of receipt of copy of this order. Liberty is granted to the respondent / husband to file a petition for visitation rights before the learned VI Additional Judge, Family Court, Chennai. The said petition shall be considered by the concerned court within a period of six months from the date of filing of the petition. Further, the petitioner / wife is directed to handover the child to the respondent / father once in a month, viz., on every 1st saturday, in the Mediation Centre at the premises of the District Court, Kandanur, Sivagangai District and if the petitioner / wife is not able to bring the child, the grand parents, viz., maternal grand parents, shall accompany the child and handover the child to the respondent / husband from 10.30 a.m. to 12.00 noon till the disposal of the Visitation Petition, to be filed by the respondent.

With the above observations and directions, the Transfer Petitions shall stand disposed of. Consequently, connected miscellaneous petitions are closed. No costs.
ssd

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The District Judge,
Chengalpet
2. The Mediation Centre,
District Court Premises,
Kandanur,
Sivagangai District
3. The VI Additional Judge,
Family Court, Chennai
4. The Subordinate Judge,
Tambaram

+1cc to Mr.S.Vasu, Advocate, SR.No.87404

+2cc to Mr.V.Vijay Shankar, Advocate, SR.No.87211

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C.M.P.Nos.11954 and 11960 of 2019

Kak(31/10/2019)