

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.11.2019

CORAM:

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

TR.C.M.P.NO.669 OF 2018

S.Bala Srividya

... Petitioner

Vs.

S.Balasubramaian

... Respondent

Prayer:

Transfer Civil Miscellaneous Petition is filed under Section 24 of the Code of Civil Procedure 1908, to withdraw and transfer the case G.W.O.P.No.09 of 2018 pending on the file of Hon'ble Family Court, Madurai to the Hon'ble Family Court at Coimbatore.

For Petitioner : Mr.Naveen Kumar Murthi

For Respondent : Mr.J.Hariharan
for M/s.K.V.Law Firm

ORDER

This Transfer Civil Miscellaneous Petition has been filed seeking for transfer of G.W.O.P.No.09 of 2018, from the file of the Family Court, Madurai, to the file of Family Court at Coimbatore.

2.The petitioner herein is the first defendant/wife in suit O.S.No.40 of 2017 and filed a present Transfer Petition seeking withdrawn G.W.O.P.No.09 of 2010 pending before the Family Court at Madurai and transfer the same to the Family Court at Coimbatore.

3.Heard, Mr.Naveen Kumar Murthi, learned counsel appearing for the petitioner and Mr.J.Hariharan learned counsel appearing for the respondent.

4.The case of the petitioner is that the petitioner got married to the respondent when she was 19 years old and she was not in a position to having understand the ceremony of marriage held on 01.09.1999. The respondent's mother being the aunt of the petitioner i.e., father's own sister had come to

petitioner's house and without her knowledge they have taken her to Thiruparankundram temple and the respondent tied "Thali" on 01.09.1999 and they said that the marriage has been completed. Later, a formal marriage took place on 16.06.1999 as per Hindu Rights and Customs at Coimbatore.

5. Due to the said wedlock, they blessed with two children viz., Balavaishnavi and Vishnu Karthick aged 17 and 12 years respectively. Various allegations stated that there was no cordial relationship between them and mental agony was caused by the respondent and in the year 2010, the petitioner went to her parent's house and alleged that the respondent threatened the petitioner to handover the custody of the children. Consequently, the petitioner took the children away from the respondent and was not allowed to see the children for an extended period of time. Eventually, in the next meeting children expressed that they wish to visit the respondent and immediately she took the custody of the children.

6. The respondent has filed a Habeas Corpus Petition in the year 2010 and the same was dismissed and asking them to seek remedy before the appropriate forum. Various complaints have been filed against the husband and she also filed a divorce petition before the Family Court at Coimbatore in H.M.O.P.No.706 of 2015 and also there was a domestic violence complaint against him under the Domestic Violence Act, the divorce was granted on 17.11.2017. In the meanwhile, there was some property dispute between them and the criminal complaint in C.C.No.30 of 2016 is pending against the petitioner before the Additional Mahila Court, Coimbatore. Subsequently, the respondent has filed a petition for custodian of the minor children under the Guardians and Wards Act.

7. The petitioner filed a transfer petition on the ground that the respondent filed G.W.O.P. seeking custody of his children as per Section 9 of the Guardians and Wards Act, and the petitioner knows that as per Hindu family where the children ordinarily reside in their father's house. The petitioner so far filed 6 cases against the petitioner and seeking transfer stated that the matter to be decided only before the Family Court at Coimbatore and not at Madurai that only to harass the respondent and making him to run from pillar to post she has filed this transfer petition.

8. The petitioner further stated that she is a Yoga Teacher and she is the only earning member of the family so that she cannot travel from Coimbatore to Madurai for G.W.O.P.No.09 of 2018 is pending before the Madurai Court which will lead to financial strain and unspoken physical and mental agony and the matter was referred to Mediation, the petitioner/wife did not

appear before the Mediation and also did not show the children to the husband/respondent even though he was requested for the same.

9. Based on the request made by the learned counsels on either side and also after giving suggestions to the counsels for the parties, this Court passed an interim order on 24.10.2019, directing the petitioner/wife to allow the children to meet their respondent/father on 02.11.2019 at Brookefields Shopping Mall at Coimbatore from 10.30 a.m. to 12.30 p.m. The respondent has filed an affidavit stating that as per the orders of this Court, he went and waited in the said Shopping Mall from 10.15 a.m. till 11.00 a.m., no body was appeared and he made a phone call to his counsel at Chennai and asked his advice. The learned counsel for the petitioner informed the counsel for the respondent that the petitioner has some inconvenience for bringing the child and hence it is not possible for her to comply with the orders. Then, the respondent left Coimbatore and boarded bus to Madurai. Later, his counsel called him and stated that she is willing to show her son to the respondent and she will inform the time and place after sometime. Thereafter, again the respondent returned back to Coimbatore around 3.15 p.m. and his counsel again called and asked the respondent to go and meet his children at the office of petitioner's counsel. Due to the untoward incidence earlier between the respondent and the petitioner's counsel, the respondent did not visit his children in the said advocate office and returned to Madurai.

10. It is seen from the affidavit filed by the husband that the respondent/husband wanted to live with the children and wife and he also submitted that it is only her parents influencing wife and she is a very good hearted person and the respondent has no hesitation and at any point of time, he is ready to accept her for the welfare of children. It is also found that the wife at an earlier point of time said that she has no intention to comply with the said order. Denying the rights of the father, who is a natural guardian for a minor son and the wife trying to protect the children without even showing them due to the reasons best known to her, is not correct.

11. This Court is not expected such kind of activity of the petitioner herein. As a legal rights of the father, he has got every right to visit the children that cannot be denied by the petitioner herein and the petitioner stated that she cannot travel to Madurai and informed this Court that she is working as Yoga Teacher and her timings of the job is not mentioned. The wife's attitude towards her husband can be understood but the rights of her husband cannot be denied by the wife on flimsy reasons.

12.This Court condemns the act of the petitioner who has no respect for the orders of this Court and she wanted to deny the same. She has committed a contempt, since this being a matrimonial issue this Court do not want to go further by passing any order but makes it clear that the wife cannot act like this in future and any such activity is done by the wife in future that will not go in this way and will have a serious consequences.

13.The stories of the life threatened by the husband is an imaginative one and the husband did not even want to cause any harm to wife but he wanted to re-unite with wife for the welfare of the children. The husband's contention is that the wife is instrumental by her parents and the act of the petitioner is also not good for the family.

14.Accordingly, this Court is not inclined to allow the petition to be transferred from Madurai to Coimbatore. Since both the parties should have a common place where they can conduct the proceedings in a peaceful manner, this Court is inclined to withdraw G.W.O.P.No.09 of 2018 is pending before the Family Court at Madurai and be withdrawn and transferred to the Family Court at Tiruppur within a period of four weeks from the date of receipt of a copy of this order and the said G.W.O.P.No.09 of 2018 to be disposed of within a period of 6 months from the date of first hearing and parties are directed to cooperate in the said proceedings. No parents of either parties to accompany them in the Court proceedings and the Mediation to be held by the said Court on the first hearing before the Mediation Centre.

15.With the above direction, this Transfer Petition is disposed of. No costs.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

pam

To

1. The Family Court, Coimbatore.
2. The Family Court, Madurai.

+1cc to M/s.S.Varsha, Advocate, S.R.No.91693

+1cc to M/s.K.V.Law Firm, Advocate, S.R.No.91618

TR.C.M.P.No.669 of 2018

SPD(CO)

CS/26/12/2019