

IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated: 05.07.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

Tr.C.M.P.No.500 of 2019 and
CMP.No.13968 of 2019

1. R.Devaraj
2. Sundari

.. Petitioners/Respondent

vs.

Devaraj

.. Respondent/Petitioners

Prayer: Transfer Civil Miscellaneous Petition filed under Section 24 of C.P.C. seeking to withdraw the G.W.O.P. No.137 of 2018 from the file of the Principal District Judge, Thiruvallur and transfer the same to the file of the Principal District and Sessions Judge, Chennai or to any other court having jurisdiction to try and dispose of the same on merits and in accordance with law.

For Petitioner : Mr.J.Raja Kalifulla,
Senior Counsel
for M/s.S.Jaganathan
...

JUDGMENT

This Transfer Civil Miscellaneous Petition has been filed by the grand parents of the child Minor Sai Suhaan and father-in-law of the respondent seeking to withdraw the G.W.O.P. No.137 of 2018 from the file of the Principal District Judge, Thiruvallur and transfer the same to the file of the Principal District and Sessions Judge, Chennai or to any other court having jurisdiction to try and dispose of the same on merits and in accordance with law.

2. Learned Senior Counsel appearing for the petitioners submitted that when the respondent father filed GWOP.137 of 2018 seeking to appoint himself as a Guardian for SaiSuhaan, a male child, aged about 3 ½ years and also praying for permanent custody of the minor child, the 1st petitioner being the father-in-law of the respondent having lost his daughter D.Eswari in a mysterious circumstances, on receipt of a notice in the above GWOP, had entered appearance through his Counsel and sought time for filing Counter. In the meantime, since the custody of the child is with his son Deenadayalan, he filed I.A.No.482/2018 to implead himself as a party to the above proceedings. While so,

the respondent filed I.A.No.485/2018 seeking interim custody of the minor child. But the learned Judge, without even waiting for their counter and without even hearing any objection directly ordered that the minor child could be produced on all the subsequent hearing dates, although the petitioners' Counsel tried his best to canvass before the Court that without permitting them to file counter and passing an order on merits it would be illegal to pass such an order directing the 1st petitioner to produce the child. It was also submitted that the 1st petitioner was not in the custody of the child and that only his son Deenadayalan was in the custody of the child. Therefore, the said order could not be complied with. However, on 5.4.2019, the 1st petitioner was represented through his counsel who sought time for filing a counter in the main GWOP. But the Presiding Officer without even recording the presence of his Advocate illegally allowed the said GWOP without even setting the 1st petitioner ex-parte. Therefore, he was shocked to know the same through his Counsel. When the main GWOP itself was illegally allowed, his Counsel filed GWOP.1930 of 2019 for obtaining the order copy and for pursuing the matter further. Again after asking the Bench Clerk as to how the main GWOP was disposed of without even recording the ex-parte evidence, the 'A' diary was altered and the hearing date was also inserted as if the matter has to be called on 13.6.2019. But the case was not called on 13.6.2019.

3. The learned Senior Counsel for the petitioners further submitted that thereafter, the GWOP was suo motu taken up on 27.04.2019 without even giving the 1st petitioner any notice of hearing and the 1st petitioner was set ex-parte and posted the matter for recording ex-parte evidence on 13.06.2019. As the 1st petitioner Counsel who was following the copy application came to know that the said matter was posted on 13.6.2019, he informed the same to him and on receipt of the information from his counsel, immediately an application has been filed to set aside the same along with a Counter. But the Presiding Officer did not even receive the same in the open Court upto 4.30 p.m. and as the filing time was over, the same was filed on 14.06.2019 in the office of the said court and numbered as I.A.No.1 of 2019. Thereafter, the said I.A. was taken up on 15.06.2019 and his Counsel represented. But for the reasons best known to the Presiding Officer, his Counsel was called absent and the 1st petitioner herein was directed to produce the child on the next hearing date on 26.6.2019. Therefore, they sought transfer of the pending GWOP.No.137 of 2018.

4. But this Court is unable to see any justification in the present appeal and the order dated 05.04.2019 passed by the learned court below cannot be found fault with by any man of prudent. The reason being that admittedly, it is not in dispute that the respondent is the father of the child. When he has

come to the court with GWOP No.137 of 2018, only an interim direction has been passed directing the production of the child so that the father can have the glimpse of his child and nothing more has been mentioned in the said order. The submission made by the learned Senior Counsel for the petitioners that the first petitioner was not having the custody of the child and that only his son Dheenadayalan is having the child in his custody, therefore, the order dated 15.6.2019 could not be complied with, is wholly unjustified. When the Court has passed an order directing the first petitioner to produce the child, it is his duty to bring the child and comply with the order. Making a statement that the child is not with him, but he is with his son, clearly shows that he is giving an evasive answer. As a law abiding citizen, he cannot make lame excuses. Secondly, when the father of the child is moving an application seeking custody and also visitation right, the Court below has directed the child to be produced so that the father can see the child. The order dated 15.6.2019 shows that a direction has been given to the first petitioner to appear with the child. When it is not an order for handing over the custody of the child to the respondent, the petitioners cannot come to this Court seeking for transfer of the case from one court to another. Therefore, finding no error or infirmity in the impugned order, this Court finds no justification to entertain the transfer civil miscellaneous petition, as the allegation of apprehension entertained by the parties is wholly unfounded. Therefore, this Court is unable to find any infirmity in the order of the learned Principal District Judge, Thiruvallur.

5. In the result, the Transfer CMP. fails and the same is accordingly dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal District Judge, Thiruvallur.
2. The Principal District and Sessions Judge, Chennai.

Tr.CMP.No.500 of 2019

MR (CO)

RRS (17/07/2019)