



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.07.2019

CORAM:

THE HONOURABLE **MR. JUSTICE S. S. SUNDAR**

T.R.C.M.P. (MD) No.188 of 2019

and

C.M.P. (MD) No.4401 of 2019

V.Sathiyavani

... Petitioner

Vs.

G.M.Gopalakrishnan

... Respondent

Prayer: Transfer Civil Miscellaneous Petition filed under Section 24 of C.P.C., to withdraw the case in G.W.O.P.No.39 of 2018 on the file of Principal District Court, Virudhunagar at Srivilliputhur, and to transfer the same to Principal District Court, Theni.

For Petitioner

:Mr.R.Suriyanarayanan

For Respondent

:Mr.S.Ramakrishnan

ORDER

This Transfer Petition is preferred by the wife, to withdraw the case in in G.W.O.P.No.39 of 201 on the file of Principal District Court, Virudhunagar at Srivilliputhur, and to transfer the same to Principal District Court, Theni.

2.The petitioner stated that the respondent is her husband and the marriage between the petitioner and the respondent was solemnized on 03.03.2014. She further stated that after few months of marriage, the respondent/husband started teasing, scolding and beating the petitioner at the instigation of his sister-in-law. It is further stated that the wife had earlier filed H.M.O.P.No.41 of 2018 before the Subordinate Court, Periyakulam for divorce on the ground of cruelty and the said petition was allowed on 11.08.2018. It is also stated that the wife has filed M.C.No.19 of 2018 before the Judicial Magistrate Court, Periyakulam, for maintenance and recovery of jewels and household articles.

3.It is further stated that the husband has filed a petition in G.W.O.P.No.39 of 2018 before the Principal District Court, Virudhunagar at Srivilliputhur, for custody of minor son by making several allegations against the wife. Stating that the Court, in which, G.W.O.P.No.39 of 2018 is pending, namely, Principal District Court, Virudhunagar at Srivilliputhur, is not a Court, in which, the petition filed by the husband for custody of

children can be maintained, the present petition is filed.

4. The learned Counsel for the respondent produced before this Court the photograph to show that the petitioner is with another man with garlands. This photograph produced by the learned Counsel for the respondent to show that the petitioner/wife has married again and living separately.

5. The learned Counsel for the petitioner submitted that the photograph produced by the respondent is relating to an affair the petitioner had earlier and that that the marriage between the petitioner and respondent was solemnized after the respondent/husband was informed about the previous incident.

6. The submission of the learned Counsel for the respondent relying upon the photograph has no relevance or significance in the present case. This Court is concerned about the jurisdiction, in which, the petition is pending as on date. Section 9 of Guardian and Wards Act, 1890 reads as follows:

"9 . Court having jurisdiction to entertain application. -

(1) 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.

If the application is with respect of the guardianship of the property of the minor, it may be made either to the District Court having jurisdiction in the place where the minor ordinarily resides or to a District Court having jurisdiction in the place where he has property.

If an application with respect to the guardianship of the property of a minor is made to a District Court other than that having jurisdiction in the place where the minor ordinarily resides, the Court may return the application if in its opinion the application would be disposed of more justly or conveniently by any other District Court having jurisdiction."

7. From the reading of Section 9 of the Act, it is very clear that an application for custody of minor would lie only before the District Court, having jurisdiction in the place where the minor ordinarily resides. In the present case, it is not in dispute that the minor is living with the mother and it is a petition, has to be filed only before the District Court, having jurisdiction over the place where the minor ordinarily resides. It is not a case where, the application is filed for guardianship of minor's property. In such circumstances, this Court is of the view that the petition itself is maintainable only before the District Court at Theni District and the petition for custody of



minor child is not even maintainable before the Principal District Court, Virudhunagar at Srivilliputhur.

8.As a result, this petition is allowed and the petition in G.W.O.P.No.39 of 2018 on the file of Principal District Court, Virudhunagar at Srivilliputhur, is withdrawn and the same is transferred to Principal District Court, Theni. The Principal District Judge, Theni, is directed to dispose of the said petition within a period of three months from the date of receipt of the records from the Principal District Court, Virudhunagar at Srivilliputhur. The Principal District Judge, Virudhunagar, is directed to transmit the entire records to the Principal District Court, Theni, forthwith. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CRL SIDE)

// True Copy //

Sub Assistant Registrar(CS)

cmr

To

- 1.The Principal District Judge, Theni.
- 2.The Principal District Judge, Virudhunagar.

+1cc to M/S.R.SURIYANARAYANAN, ADVOCATE, SR,NO.72516
+1cc to M/S.S.RAMAKRISHNAN, ADVOCATE, SR,NO.72647

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BUC(10.07.2019) 3P 5C