

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

Transfer C.M.P.No.822 of 2019 and
C.M.P. No.22791 of 2019

S.Hema Sankari

...Petitioner

vs.

Saravanan Govindan

...Respondent

Transfer Civil Miscellaneous Petition filed under Section 24 of C.P.C., to withdraw the case bearing in G.O.P. No.25 of 2019 on the file of Principal District Judge, Dharmapuri and transfer the same to the file of learned Family Court Judge, Coimbatore.

For Petitioners : Mr.M.R.Jothimanian

For Respondent : Mr.R.Selvakumar

O R D E R

The present Transfer Civil Miscellaneous Petition has been filed to transfer G.O.P. No.25 of 2019 pending on the file of learned Principal District Judge, Dharmapuri to Family Court, Coimbatore.

2. It is represented by the learned counsel for the petitioner that there was an earlier order passed by this court wherein, the respondent was permitted to take custody of the child, provided, the respondent hands over the passport of the child.

3. The learned counsel appearing for the respondent herein/husband would submit that passport of the child has already been handed over to the petitioner/mother, for which necessary endorsement has been given as early as on 19.08.2016 vide the list of documents. He further submits that the child was born at Singapore and that the matter has been filed before the jurisdictional court, which has got right to take up the matter and try in accordance with law.

4. The contention of the wife is that there was an order that husband's passport has got to be handed over for taking the child with him and that the said order has not been complied with and that in terms of Section 9 of the Guardian and Wards Act, 1890, as the child is residing at Coimbatore, court situated at Dharmapuri, may not have jurisdiction to try the case. Apart from that, as the matter is relating to restitution of conjugal rights, besides divorce and domestic violence cases are pending at different courts at Coimbatore, the matter needs to be transferred.

5. Heard both parties and perused the materials available on record.

6. It is not in dispute that the Guardianship OP has been filed at Dharmapuri. There is no iota of evidence, to show that the child was residing at Dharmapuri, but it has been stated that the child has been residing at Coimbatore. A reading of Section 9 of the Guardian and Wards Act, 1890, would make it very clear that the OP can be filed where the place where the minor ordinarily resides. Whether the child resides at Dharmapuri or at Coimbatore, cannot be adjudicated in the present Transfer Civil Miscellaneous Petition. However, there is no bar for transferring of case from one court to another court, more particularly, when matter pertaining to divorce, restitution of conjugal rights and domestic violence case are pending in various courts at Coimbatore and that the parties are regularly represented by lawyers at Coimbatore court.

7. Taking note of Section 9(1) of the Guardian and Wards Act, 1890 and by reserving rights to both the parties, to address arguments questioning the jurisdiction, in the interest of the parties and the child, G.O.P. No.25 of 2019 pending on the file of the learned Principal District Judge, Dharmapuri, is withdrawn and transferred to the file of Family Court, Coimbatore. The child should not lose the love and affection of either of the parents and taking note of this, the court to which the matter is transferred, is expected to adjudicate the Guardianship OP at the earliest point of time without adjourning the matter beyond fifteen working days at any point of time. The child is not a pendulum, oscillating from one place to another. Both the parents must understand that the child is not a shuttlecock to be played and the home is not the court (playground) for the child to be tossed from one end to another.

8. The Transfer Civil Miscellaneous Petition is allowed, with the above directions. No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

Asr

To :

1. The Principal District Judge,
Dharmapuri.
2. The Family Court,
Coimbatore.

+1cc to Mr.M.R.Jothimanian, Advocate Sr.6963
+1cc to Mr.R.Selvakumar, Advocate Sr.6569

Tr.C.M.P.No.822 of 2019 and
C.M.P. No.22791 of 2019

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