

08.01.2021
D/L-13 &14,
Ct-9
(AD)

(Via Video Conference)

C.O. 3410 of 2019

Tulika Dhara Sarkar

Vs.

Somnath Sarkar

With

C.O. 3411 of 2019

Tulika Dhara Sarkar

Vs.

Somnath Sarkar

Mr. Rwitendra Banerjee

Mr. Shibasis Chatterjee

Mr. Ankita Dey

... For the petitioner.

Mr. Subhashis Paul

... for the opposite party

Affidavit of service filed in Court today be kept with the records.

Both the revisional applications being C.O. 3410 of 2019 and C.O. 3411 of 2019 are taken up together for analogous hearing.

In C.O. 3410 of 2019, the wife/petitioner has prayed for transfer of Matrimonial Suit No.1129 of 2019 pending before the learned Additional District Judge, 3rd Court at Barrackpore, North 24-Parganas to the Court of the learned District Judge at Berhampore Murshidabad and at the time of hearing of the instant application, it is submitted by Mr. Banerjee, learned Advocate for the petitioner, that in the computerized filing system the number of the matrimonial suit is recorded as 1129 of 2019 but in the summons received by the petitioner from the Court of the learned

Additional District Judge at Barrackpore, the number of the suit is recorded as 1125 of 2019. This discrepancy may be sorted out on the basis of the submission made on behalf of the opposite party.

Learned Advocate for the opposite party submits that the number of matrimonial suit is 1125 of 2019 and not 1129 of 2019. It is also submitted by the learned Advocate for the opposite party under instruction that he has no grievance or objection if the matrimonial suit is transferred to the Court of the learned District Judge at Berhampore, Murshidabad considering the age of their minor child and practical difficulty of the petitioner.

In view of such circumstances and taking into account the submission made by the learned Advocate for the opposite party, matrimonial suit under the cause-title *Somnath Sarkar vs. Tulika Dhara Sarkar* pending before the learned Additional District Judge, 3rd Court at Barrackpore be transferred to the Court of the learned District Judge at Berhampore.

Learned Additional District Judge, 2nd Court at Barrackpore is directed to confirm the registration number of the matrimonial suit before transferring the same.

C.O. 3411 of 2019 is an application for transfer of a proceeding which was registered as Miscellaneous Case No.127 of 2019. On perusal of the copy of the

pleadings of Miscellaneous Case No.127 of 2019, it is ascertained that the said miscellaneous case was filed under Section 26 of the Hindu Marriage Act by Sri Somnath Sarkar against his wife Smt. Tulika Dhara Sarkar praying for custody of their minor child who is now residing with his mother. At present, the child is six years' old.

Section 26 of the Hindu Marriage Act deals with interim custody of children during pendency of a matrimonial proceeding. No final relief can be granted under Section 26 of the Hindu Marriage Act praying for custody of a minor child either by the father or mother or near relative. If any such application is filed, it is to be filed in a pending matrimonial proceeding and not independently.

However, it is ascertained from the copy of the application that the learned District Judge, Barasat registered the application under Section 26 of the Hindu Marriage Act as independent miscellaneous case for deciding permanent custody of a minor child.

Permanent custody of minor child can never be decided upon an application under Section 26 of the Hindu Marriage Act and if any such application is filed independently without mentioning the pending matrimonial suit, such application is liable to be rejected summarily.

In view of such circumstances, I am not going to

pass any order transferring the said proceeding under Section 26 of the Hindu Marriage Act from the 2nd Court of the learned Additional District Judge, Barrackpore to the Court of the learned District Judge, Berhampore, Murshidabad.

The learned Additional District Judge, 2nd Court at Barrackpore is directed to act in accordance with law while dealing with Miscellaneous Case 127 of 2019 on the basis of the observation made hereinbefore by this Court and pass necessary order according to law.

Both the civil orders are disposed of on contest, however, without costs.

The parties are at liberty to act upon the server copy of this order.

(Bibek Chaudhuri, J.)