



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

Tr.C.M.P.No. 802 of 2021

And

C.M.P.No. 18683 of 2021

G.Caroline ... Petitioner/Respondent/Petitioner  
Vs.

S.Simson ... Respondent/Petitioner/Respondent

PRAYER: Transfer Civil Miscellaneous Petition filed under Section 24 of Code of Civil Procedure, praying to withdraw the Petition filed by the respondent in I.A.No. 1 of 2021 in G.W.O.P.No. 97 of 2016 pending on the file of IV Additional District Judge of Tirunelveli, and transfer the same to Family Court at Chennai.

For Petitioner : Mr. Adinarayana Rao

For Respondent : Mr. P.Kamarasu

#### O R D E R

The mother seeks transfer of I.A.No. 1 of 2021 filed by the father of the child seeking visitation rights from the file of Family Court, Tirunelveli, to the Family Court at Chennai.

2. The parties are divorced. They fought over the custody of the child. The wife filed G.W.O.P.No. 97 of 2016 and the husband filed G.W.O.P.No. 10 of 2017. Both the proceedings were tried together before the IV Additional District Court, Tirunelveli. By a common order dated 08.01.2018, the learned IV Additional District Judge, Tirunelveli, allowed G.W.O.P.No. 97 of 2016 filed by the mother and dismissed G.W.O.P.No. 10 of 2017 filed by the father. Thereafter, the father has now filed I.A.No. 1 of 2021 seeking visitation rights and temporary custody during vacation.



3. The said I.A.No:1 of 2021 is sought to be transferred to a Court at Chennai on the ground of convenience by the mother, who now claims that she is resident of Palavanthangal, near Chennai and the child is studying in a School at Adambakkam.

4. The request of transfer is opposed by the counsel for the husband contending that what is sought is not custody or guardianship. All that is sought for by the husband is visitation rights during vacation and week ends. This issue could be well decided by the Court which decided the original petitions for custody of the child.

5. The learned counsel would also submit that the Additional District Court, Tirunelveli, had not insisted upon the presence of the parties for any of the hearings. Therefore, according to the learned counsel there is no justification for the request of transfer.

6. Mr. Adinarayana Rao, learned counsel appearing for the petitioner/mother would however contend that it will be very difficult for her to go to Tirunelveli for every hearing since the child is studying in Chennai. It will be very convenient for her if proceedings are transferred to the Courts at Chennai or any near by place.

7. I have considered the submissions of the learned counsel for the parties.

8. I do not think this is a fit case for transfer. The proceeding now pending is not a main proceeding. Its only an Interlocutory Application by the father of the child seeking visitation rights/temporary custody which can be disposed of summarily and it does not need elaborate trial. True that the trial Court has after trial held that the interest of the minor will be better served if the minor continues to be in the custody of the mother. The father has not appealed against those proceedings and he has accepted the Judgment of the trial Court. All that he seeks now is visitation rights. Whether he is entitled to visitation rights or not can be decided by the Court on the basis of affidavits and counter affidavits.

9. I do not see any reason to transfer the proceeding to any other Court from the Court which had decided the original petition. It is made clear that the Court while hearing I.A.No. 1 of 2021 in G.W.O.P.No. 97 of 2016 will not insist on the presence of the parties for all the hearings. If the Court feels it necessary to interact with the minor in the interest of the minor, the Court may direct production of the minor for a few hearings. For the other hearings, the parties can be



represented through their counsel.

10. With the above said direction, this Transfer Civil Miscellaneous Petition is dismissed. Consequently, connected Miscellaneous Petition is closed.

Sd/-  
Assistant Registrar(LA)

//True Copy//

Sub Assistant Registrar

vsg

To

The IV Additional District Court,  
Tirunelveli.

+lcc to Mr.R.Kamarasu, Advocate, S.R.No.2094

Tr.C.M.P.No. 802 of 2021  
And  
C.M.P.No. 18683 of 2021

UM(CO)  
SU(31/01/2022)