



TR.C.M.P(MD).No.370 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 10.08.2022

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

TR.C.M.P(MD).No.370 of 2022

and

C.M.P(MD).No.6141 of 2022

1. Chandra

2. Durga

... Petitioners

versus

1. Vaithiyanathan

2. Subashini

... Respondents

Transfer Civil Miscellaneous Petition is filed under Section 24 of C.P.C to withdraw the case in G.O.P.No.232 of 2021 on the file of the learned Family Judge, Cuddalore and transfer the same to the file of the Family Court, Tanjore District.

For Petitioners : Mr.T.Lajapathi Roy

For Respondents : Mr.L.Prabakaran



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ORDER

This Transfer Civil Miscellaneous Petition is filed by the grandmother and aunt of the minor children, seeking transfer of G.O.P.No.232 of 2021 from the file of the learned Family Judge, Cuddalore, to the file of the Family Court, Tanjore District.

2. The learned counsel appearing for the petitioners submits that the respondents herein are biological father and mother of the minor children. Due to difference of opinion between the respondents, the minor children are living along with their grandmother from the beginning and they are also studying in St. Annes Matriculation Higher Secondary School, Kumbakonam. Now, the respondents have solved their differences among themselves and are living together. Therefore, they have filed a petition in G.O.P.No.232 of 2021 for custody of the children before the Family Court, Cuddalore.



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3. The learned counsel appearing for the petitioner further submits that the minor children are not willing to go along with their parents, namely, the respondents herein and if the case in G.O.P.No. 232 of 2021 is not transferred from the Family Court, Cuddalore, then, their studies would be affected.

4. The learned counsel appearing for the respondents refuted the same stating that they are not studying in St. Annes Matriculation Higher Secondary School, Kumbakonam.

5. Though the learned counsel appearing for the respondents disputed the same that the children are not studying in St. Annes Matriculation Higher Secondary School, Kumbakonam, the fact remains that the children are in the custody of the petitioners from the beginning and they are also studying at Kumbakonam only.



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6. The paramount consideration is the welfare and interest of the child. The Hon'ble Supreme Court, in *Mausami Moitra Ganguli vs. Jayanti Ganguli*, reported in **(2008) 6 SC 634** has also held as follows:

“It is trite that while determining the question as to which parent the care and control of a child should be committed, the first and the paramount consideration is the welfare and interest of the child and not the rights of the parents under a statute.”

7. In view of the settled position of law that welfare of the minor child is the paramount consideration and also considering the fact that the children are in the custody of the petitioners and they are also studying at Kumbakonam, this Court is inclined to transfer the case in G.O.P.No.232 of 2021 from the file of the Family Court, Cuddalore, to the file of the Principal District Court, Thanjavur.

8. Accordingly, the Transfer Civil Miscellaneous Petition is allowed and the case G.O.P.No.232 of 2021 is withdrawn from the file



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of the Family Court, Cuddalore and transferred to the file of the Principal District Court, Thanjavur. The learned Judge, Family Court, Cuddalore, is directed to transmit the entire case records to the Principal District Court, Thanjavur, forthwith. The learned Principal District Judge, Thanjavur, is directed to dispose of the case as expeditiously as possible. No costs. Consequently, connected miscellaneous petition is closed.

10.08.2022

Index : Yes / No

Internet: Yes / No

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To

1. The Sub Court,
Kovilpatti.

2. The Sub Court,
Sivakasi.



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B.PUGALENDHI, J.

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