



Tr.C.M.P(MD)No.45 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **02.03.2023**

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

Tr.C.M.P(MD)No.45 of 2023

and

C.M.P(MD)No.1038 of 2023

Arunachalam

... Petitioner/Respondent

Vs.

Selvaraj

...Respondent/Petitioner

PRAYER : Transfer Civil Miscellaneous Petition is filed under Section 24 of Code of Civil Procedure, withdraw and transfer the case in G.W.O.P.No.287 of 2021 on the file of Additional District Judge (FTC), Tenkasi to any other nearby competent Court.

For Petitioner : Mr.V.Kathirvel
Senior Counsel
for Mr.K.Jeyamohan

For Respondent : Mr.M.Vivek Bharathi



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ORDER

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The present transfer civil miscellaneous petition has been filed by the father praying for transfer the G.W.O.P.No.287 of 2021 pending on the file of the Additional District Court (FTC), Tenkasi to be transferred to any other competent Court.

2. The said G.W.O.P has been filed by the maternal grand father of the 2 minor children seeking custody of the children on the ground that his daughter/mother of the minor children had already passed away and the father has got re-married.

3. While the said G.W.O.P was pending, the maternal grand-father has filed I.A.No.1 of 2021 seeking interim custody of the minor children. The said application was allowed on 11.11.2022 granting visitation rights to the maternal grand-father. The father was directed to hand over the child to the maternal grand-father on every Saturday at 9.00 a.m and he should take back the children by Sunday evening 5.00 p.m every week. The said order was challenged by the father in C.R.P(MD)No.2394 of 2022. This Court was pleased to modify the said order to the effect



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that the maternal grand-father could visit the children at Balasubramania Temple at Sivagiri from 9.00 a.m to 12.30 p.m. on Sunday alone.

According to the learned senior counsel appearing for the petitioner in the transfer C.M.P, this order of High Court is being complied with regularly.

4. The learned senior counsel appearing for the transfer petitioner has contended that the learned trial Judge while passing orders in I.A.No. 1 of 2021 in Paragraph No.8 of the order has expressed certain observations as against the father of the minor children and has proceeded to grant interim custody of the children to the grand-father for a period of 2 days in a week. This order of the learned trial Judge has caused some apprehension in the mind of the father that the learned Judge has already pre-determined the said issue. Hence, the present transfer civil miscellaneous petition has been filed to transfer G.W.O.P.No.287 of 2021 from Additional District Court (FTC), Tenkasi to any other competent Court.

5. Per contra, the learned counsel appearing for the maternal grand-father by filing a detailed counter has contended that when he is a



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senior citizen and when he had attended the hearing at Tenkasi, he was threatened by the father and his relatives. He has further contended in Paragraph No.6 that the father is having money power and muscle power in Tenkasi. However, the learned counsel for the respondent submits that after complaint made to this Court, they have stopped intimidating the respondent herein. He further contended that Sivagiri is located just 50 kms away from Tenkasi and therefore, it would be convenient for the minor children to attend hearing, if they are also called for. On the other hand, if the same is transferred to any other Court, it will be difficult for the minor children and also the maternal grand-father to attend the Court. Therefore, he prays for continuation of proceedings before Additional District Court (FTC), Tenkasi. The learned counsel for the respondent further contended that the observations made by the trial Court in Paragraph No.8 of the order while granting interim custody can no way considered to be against the father.

6. I have carefully considered the submissions made on either side.

7. The application sought to be transferred is a G.W.O.P that is pending on the file of the Additional District Court (FTC), Tenkasi.



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Being a guardian O.P, in view of Section 9 of the Guardians and Wards Act 1890, it can be entertained only by a Court within whose jurisdiction the minors are ordinarily residing. In the present case, admittedly the minor children are with the father and residing and studying in a school at Sivagiri. As far as Sivagiri is concerned, the District Court in which the guardian O.P could be filed is Principal District Court at Tirunelveli. Accordingly, the G.W.O.P has been originally filed only before the Principal District Court, Tirunelveli and it has been, made over to Additional District Court (FTC) Tenkasi. Therefore, it is clear that in view of Section 9 of the Guardian and Wards Act, the case can either be heard at Additional District Court(FTC), Tenkasi or before any District Court at Tirunelveli. Therefore, transferring of this case would not be in violation of Section 9 of the Guardian and Wards Act, 1890.

8. The learned senior counsel appearing for the petitioner has expressed that certain unwarranted observations have been made which may not be relevant or required for the disposal of the application for interim custody made by the maternal grand-father. According to him, those observations would display some kind of pre-determination on the part of the learned District Judge. However, the said allegation is stoutly



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refuted by the learned counsel appearing for the respondent herein.

Considering the fact that the respondent in his counter in Paragraph No.8 has contended that the petitioner is having money and muscle power and he was once threatened at Tenkasi, I feel that in the interest of justice and also in the interest of the minor children, the matter shall be transferred to the parent Court, namely the Principal District Court, Tirunelveli. The learned Principal District Judge, Tirunelveli may either try the G.W.O.P by himself or may transfer it to any other Additional District Court at Tirunelveli.

9. The learned counsel for the respondent has pointed out that citing the order of this Court, the father is not permitting the other relatives who have the visitation rights of the child. However, the learned senior counsel appearing for the father/petitioner pointed out that the maternal grand-father used to have the visitation rights along with 10 other persons and hence, he has objected for the same. However, this Court finds that not only the maternal grand-father but also the maternal grand-mother is equally entitled to have the visitation rights. Apart from Selvaraj, his wife and their son Mr.Palvannan are entitled to have the visitation rights of the minor children. Apart from these 3 persons, no



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other persons shall accompany and create a scene at the time of having visitation.

10. In view of the above said observations, G.WO.P.No.287 of 2021 pending on the file of Additional District Court (FTC), Tenkasi is hereby withdrawn and transferred to Principal District Court, Tirunelveli. With the said observations, this petition stands allowed to the extent as stated above. Consequently, connected Civil Miscellaneous Petition is closed.

02.03.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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To

- 1.The Additional District Court (FTC),
Tenkasi.
- 2.The Principal District Court,
Tirunelveli.
- 3.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

R.VIJAYAKUMAR ,J.



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Order made in
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