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Tr.C.M.P.No.260 of 2026

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.06.2026

CORAM

THE HON'BLE Mrs.JUSTICE R.KALAIMATHI

Tr.C.M.P.No.260 of 2026

and

C.M.P.No.8019 of 2026

J.Ajay Ensteen Raj

... Petitioner

Vs

K.Roobini

... Respondent

PRAYER: Transfer Civil Miscellaneous Petition is filed under Section 24 of Civil Procedure Code, to withdraw G.W.O.P.(H.M.G.O.P.) No.4 of 2026 from the file of Family Court, Puducherry and to transfer it to the file of Additional District Court, Virudhunagar.

For Petitioner	: Mr.P.Satheesh Kumar
For Respondent	: Mr.M.Santhanamari

ORDER

Heard the learned counsel for the petitioner(Husband) and the learned counsel for the respondent(Wife).

2. The respondent(Husband) in G.W.O.P.No.4 of 2026 on the file of Family Court, Puducherry is the petitioner herein.

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3. Petitioner(Husband) would aver that the respondent (wife) was

not taking care of the children and in view of difference of opinion, he filed I.D.O.P.No.139 of 2026 on the file of Srivilliputhur Court for dissolution of marriage. He would further state that he also filed G.W.O.P.No.41 of 2026 before Srivilliputhur Court and it is transferred to Virudhunagar and is pending. Meanwhile, respondent lodged a complaint before the Bahour Police Station, Puducherry stating that the petitioner (Husband) has detained their children. In view of the conduct of the respondent (wife), he lodged a complaint against her in order to protect their children's life.

3.1. Meanwhile, the respondent(wife) filed H.C.P., before this Court in H.C.P.No.117 of 2026 stating that her children are under his illegal custody and the same was dismissed by granting liberty to the respondent (wife) to work out the remedy in the manner known to law. As per law, if two petitions came to be filed for the very same relief that the petition filed later should be stayed. Therefore, G.W.O.P.No.4 of 2026 pending on the file of Family Court, Pondicherry may be transferred to the file of Additional District Court, Virudhunagar, where G.W.O.P.No.41 of 2026 filed by him is pending for adjudication.



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4. The learned counsel for the petitioner (Husband) would reiterate the facts set out in the petition and seeks to transfer G.W.O.P.No.4 of 2026 pending on the file of Family Court, Puducherry and to transfer the same to the file of Additional District Court, Virudhunagar.

5. Per contra, the learned counsel for the respondent (Wife) would vehemently contend that the allegations raised against the respondent are not true and the children were in fact with the respondent and it is the petitioner (Husband) has forcibly taken the children and filed G.W.O.P., which is not maintainable in law. He would further contend that in such circumstances, filing of Transfer Civil Miscellaneous Petition to transfer the G.W.O.P. filed by the wife is totally not acceptable and seeks to dismiss the Transfer Civil Miscellaneous Petition.

6. On perusal of the typed set of papers, it is deducible that the husband filed G.W.O.P.No.41 of 2026 before the Principal District Court, Srivilliputhur on 23.02.2026. On 17.10.2025, both petitioner and the respondent have entered into an undertaking affidavit wherein the



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children are left with the wife. The children and the respondent (wife)

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were taken to her parents home by her parents on 17.10.2025. In the said undertaking affidavit, petitioner and his parents have signed on the left side and on the right side, respondent and her parents have signed. On 25.12.2025, at about 11.39 p.m., wife had lodged complaint before the National Commission for Women in Receipt No.2014111737742. The said complaint of the respondent (wife) has been forwarded to Senior Superintendent of Police, Pondicherry by National Commission for Women. She has lodged a complaint that the petitioner (Husband) took their minor son to his native without her consent. It appears that their elder son Riyan Josua is a student of Akshara Vidhyashram, Cuddalore studying in U.K.G., during the Academic Year 2025-26. In her complaint to the Bahour Police Station dated 07.01.2026, she has alleged that her son was taken by her husband on 23.12.2025 to his native place for celebrating Christmas and on 30.12.2025, some two persons came to her residence and took her girl child and when she rang up to her husband, the phone was in switched off mode. She has requested to find out her children and hand over the custody of the children to her. She has also sent a complaint to the Inspector General of Police, Pondicherry through OnLine on 09.01.2026.



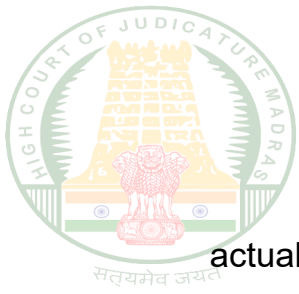
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7. From a perusal of entire records, it is deducible that petitioner and the respondent had developed misunderstanding and ultimately on 17.10.2025, the respondent along with children were sent to her native. It is also made clear that on 23.12.2025, the petitioner(husband) has taken his son from the custody of the respondent(wife) to his native to celebrate Christmas and did not return back his son to the respondent (wife). The second child namely daughter who is aged about 1 ½ years old was taken away by some known persons of the petitioner from the custody of the respondent (wife) when the respondent had gone to the College where she is working.

8. G.W.O.P.No.4 of 2026 has been filed on 20.02.2026 before the Family Court, Puducherry.

9. Section 9 of the Guardians and Wards Act, 1890, provides that in respect of guardianship of a person of minor, the application shall be made with the District Court having jurisdiction of the place where the minor “Ordinarily resides”. The word “Ordinarily resides” has got a meaning that it rules out temporary residence of the children. Therefore, the expression ‘Ordinarily resides’ refers to the place where a person is



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actually or suppose to be living. A place of living under compulsion cannot be treated a place where the person Ordinarily resides.

10. Date of Birth of the son - Rion Josua is 13.07.2020 and the Date of Birth of the girl child - Raelyn Anah is 20.10.2023. Son was studying at Akshara Vidyashram in Cuddalore during the Academic Year 2025-26. Therefore, it is pellucid that the children were taken away from the custody of the mother to his native place. In such circumstances, it cannot be stated that the child was ordinarily residing at Virudhunagar. In fact, against the wishes of the mother, the children were taken by the husband.

11. It is relevant to note that respondent(wife) after the children were taken away by her husband without her consent, she filed H.C.P. before this Court to hand over the custody of the children to her and it was dismissed by this Court.

12. As the petitioner has taken both the children without the consent of the respondent (wife), it cannot be presumed that the Court at Virudhunager has got jurisdiction to entertain the petition. The



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petitioner would aver that he has filed G.W.O.P.No.41 of 2026 which is pending on the file of Additional District Court, Virudhunagar and petition filed by the wife in G.W.O.P.No.4 of 2026 is pending before the Family Court, Puducherry, seeks to transfer the same to the file of Additional District Court, Virudhunagar.

13. The test for determining the expression where the minor ordinarily resides used in Section 9(1) of the Guardians and Wards Act, 1890, relates to jurisdiction of Court to entertain petition for custody of minor. The words Ordinarily resides provides something more than the casual stay. In this case, children were originally residing in Puducherry and on two different dates children were taken away by the petitioner (husband) to his native and therefore, the Family Court, Puducherry has got jurisdiction to try the G.W.O.P.

14. Of Course, it cannot be denied that if the G.W.O.Ps., are decided separately, conflict of judgments would arise. The Court can mould the relief in order to advance the cause of justice. This is a suitable case where in order to have an effective justice, G.W.O.P.No.41 of 2026 on the file of Additional District Court Srivilliputhur is ordered to



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be withdrawn and to be transferred to the file of Family Court,
Puducherry.

15. Based on the aforesaid observations and discussions, this
Transfer Civil Miscellaneous Petition is disposed of accordingly.

16. The learned Judge of the Family Court, Puducherry, on
receipt of the records shall take all effective steps to dispose of the
matter in accordance with law at the earliest preferably within four
months from the date of receipt of copy of this order. No Costs.
Consequently, connected Civil Miscellaneous Petition is closed.

01.06.2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No
ssn



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To

1. The Family Court, Puducherry.
2. The Additional District Court, Virudhunagar.
3. The Section Officer,
V.R.Section, High Court,
Madras.



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R.KALAIMATHI, J.,

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