

(2011) 03 MP CK 0030

Madhya Pradesh High Court

Case No: M.C.C. No. 1676 of 2010

Rajni Chile

APPELLANT

Vs

Amit Chile

RESPONDENT

Date of Decision: March 25, 2011

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 24
- Criminal Procedure Code, 1973 (CrPC) - Section 125
- Guardians and Wards Act, 1890 - Section 10, 25, 7

Citation: (2011) ILR (MP) 2070 : (2011) 2 MPLJ 573

Hon'ble Judges: U.C Maheshwari, J

Bench: Single Bench

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

U.C. Maheshwari, J.

This petition is preferred by the Applicant/wife u/s 24 of the CPC for transferring the Misc. Civil Suit No. 23/2010 filed by the Respondent/husband under Sections 7, 10 read with Section 25 of the Guardian And Wards Act, pending in the Court of 1st Addl. District Judge, Balaghat, from such Court to some Court of Jabalpur having the jurisdiction to adjudicate such matter.

The facts giving rise to this petition are that the Applicant got married with the Respondent in accordance with the customs of the Hindu community at Balaghat on 27-2-2009. Out of the aforesaid wedlock, they were blessed with a child who is aged 6 months. As per further averments, on account of some matrimonial dispute and differences, under compulsion, the Applicant along with her infant child, is residing at Jabalpur. It is also stated that due to the activities and behaviour of the Respondent and his family members and also on making dowry demand, some

report in writing was also given at the instance of the Applicant to the public authority at Jabalpur. On neglecting the Applicant and her infant child by the Respondent, she also filed the petition u/s 125 of the Code of Criminal Procedure for maintenance in the Family Court of Jabalpur which is still pending. Consequently by adopting the revengeful attitude, in order to harass the Applicant, the Respondent has filed the above mentioned civil suit under the provisions of Guardian And Wards Act for taking the custody of the infant boy from the Applicant in the aforesaid Court of Balaghat. As per further averments of the petition, in the available circumstances as stated in the petition and especially in view of the age of the infant child i.e. 6 months, it is not possible for the Applicant to go along with her infant child to defend the case at Balaghat. Besides this ground, the prayer is also made for transferring the aforesaid case from such Court to some Court of Jabalpur taking into consideration the convenience and the difficulties of the Applicant. With these averments the Applicant has filed this petition.

It is apparent fact on record that the averments of such petition and the affidavit are not rebutted by the Respondent by filing any reply but on hearing the petition, the averments of the same are seriously disputed by the counsel saying that this petition is preferred by mentioning the wrong and incorrect facts. In continuation it was also said that the parents of the Applicants are residing at Narsingpur, hence there is no occasion to make the prayer to transfer the aforesaid case from Balaghat to Jabalpur. In any case the Applicant wants to harass the Respondent by calling him to Jabalpur, subject to transferring the aforesaid case. In the lack of any prayer to transfer the case from Balaghat to Narsingpur the Applicant's petition could not be deemed to be bona fide and prayed for dismissal of the same. However, he did not dispute the age of the infant child i.e. 6 months and also the fact that such infant is residing with the Applicant.

Having heard the parties, after perusing the averments of the petition as well as the papers placed on the record, I am of the considered view that this petition should be decided keeping in view the convenience and difficulties of the parties. It is settled principle of law that in the matter of convenience and difficulties, the women requires more consideration in comparison of men and especially in the circumstance where the woman has an infant child in her lap whom she could not leave at the assurance of any person even to a person belonging to her parental family. A judicial notice can be taken in that respect that a child aged six months could not reside without her mother and looking to the age of the child, by dismissing her petition she could not be insisted to go and attained the case at Balaghat along with her infant child. If the case is not transferred from Balaghat to Jabalpur then not only to the Applicant has to face the difficulty or inconvenience but her infant child will also face such inconvenience and difficulty without any fault of him.

So far the objection of the Respondent's counsel that the parents of the Applicant, being residents of Narsingpur, her prayer to transfer the case at Jabalpur could not be deemed to be bona fide, has not appealed me because as per submission of the Applicant who was present at the time of hearing of this petition, she along with her infant child, is residing at Jabalpur in some house of her parents where her real brother who is prosecuting his studies in Engineering College of Jabalpur is also residing. In view of such fact, mere on the ground that she is not residing at Narsingpur at the native place of her parents, this petition could not be thrown away holding that the prayer made by the Applicant is not genuine or bona fide. In any case, Jabalpur is more convenient place for both the parties to contest the aforesaid matter as it is nearabout 225 KM from Balaghat while Narsingpur is far away near about 100 KM from Jabalpur. So even on transferring the case to Narsingpur, the Respondent has to come from Balaghat to Narsingpur and in such a situation the Applicant has to go with her infant child to Narsingpur to defend the case and that would not be proper for her as she has already contested her case of maintenance at Jabalpur. In the aforesaid premises, I am of the considered view that if the aforesaid case is not transferred from Balaghat to Jabalpur for its further trial and adjudication or it is transferred to some Court of Narsingpur then in that circumstance in comparison of Respondent, the Applicant and her infant child have to face great inconvenience and difficulty to defend the aforesaid case at Balaghat or at Narsingpur.

Therefore, in view of the aforesaid discussion, by allowing this petition, the aforesaid Misc. Civil Suit No. 23/2010 Amit Chile v. Smt. Rajni Chile pending in the Court of 1st Addl. District Judge, Balaghat, is hereby ordered to be transferred from such Court to the Court of District Judge, Jabalpur for its further trial and adjudication. It is made clear that the District Judge Jabalpur shall be at liberty to make-over such case to any other Court having the jurisdiction to hold the trial and adjudicate the same under its administrative powers.

Let aforesaid both the Courts be intimated regarding this order within seven days to comply the aforesaid directions. The Applicant is also directed to submit the certified copy of this order in the aforesaid Court of Balaghat enabling such Court to transfer the aforesaid case in compliance of the aforesaid direction.

Petition is allowed as indicated above.