(2002) 12 AP CK 0028

Andhra Pradesh High Court

Case No: Transfer C.M.P. No. 187 of 2002

Mareedu Satyanarayana Prasad and Another		APPELLANT
	Vs	
Mallipudi Padmaja		RESPONDENT

Date of Decision: Dec. 24, 2002

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 24
- Family Courts Act, 1984 - Section 20
- Guardians and Wards Act, 1890 - Section 3, 7, 7(1), 9

Hon'ble Judges: P.S. Narayana, J

Bench: Single Bench

Advocate: P.R. Prasad, for the Appellant; Subrahmanyam, for the Respondent

Judgement

P.S. Narayana, J.
The petitioners filed the above Transfer Civil Miscellaneous Petition u/s 24 of the Code of Civil Procedure, hereinafter in short referred to as "Code" praying for transfer of G.W.O.P. No. 177 of 2002 from the Family Court, Vijayawada to the Court of Additional District Judge, Krishna to be tried along with G.W.O.P. No. 137 of 2002 and to pass such other suitable orders.

2. The petitioners are wife and husband and the respondent is their daughter. It is stated that the respondent fell in love with one Mallipudi Chakravarthi and according to their wishes, marriage was celebrated on 5-8-1992 at Gudivada. It was further stated that during their wedlock, a daughter was born to them on 26-12-1996 and the respondent and her husband lived together for some time at Gudivada, but due to ill-luck, they could not pull on together and in such circumstances, the child Himani was left with them at the age of 6 months and she was brought up by them with love and affection and the petitioners have been taking care about her welfare. Subsequent thereto, the respondent

herein had left Gudivada and settled down at Vijayawada and has been staying in Women''s hostel and thus she is totally ignoring the welfare of the child and has been making all efforts to obtain divorce from her husband and to marry another person. In such circumstances, inasmuch as the welfare of the minor child is of paramount importance, the petitioners moved an application before the District Court, Krishna to appoint the 1st petitioner as guardian of the minor child in G.W.O.P. No. 137/2002 on the file of Additional District Judge, Krishna, Machilipatnam, and the petitioners also moved an application for injunction restraining the respondent from removing the child from their custody and the Court was pleased to grant the injunction which is still in force. It is also stated that after receipt of notice filed in the above O.P., the respondent herein filed G.W.O.P. No. 177/2002 against the petitioners before the Family Court, Vijayawada for custody of the child. It is also stated that the minor child has been residing with the petitioners at Gudivada within the territorial jurisdiction of Machilipatnam and hence an application for custody of the child lies only before the District Court, Machilipatnam. It is further stated that in such circumstances, to avoid conflicting decisions it is prayed for transfer of G.W.O.P. No. 177/2002 from the Family Court, Vijayawada to the Court of Additional District Judge, Krishna to be tried along with G.W.O.P. No. 137 of 2002 and for passing such other suitable orders.

3. Sri Prasad, the learned Counsel representing the petitioners had submitted that the fact that the child is residing at Gudivada is not in dispute. The learned counsel also had drawn my attention to the notification issued in G.O.Ms. No. 11, dated 23-2-1995 wherein the operation of Family Court at Vijayawada was specified as over the metropolitan area of Vijayawada. The learned counsel also had contended that in view of Section 9 of the Guardians & Wards Act, 1890, the District Court at Machilipatnam alone will have jurisdiction over the area where actually the child is residing. The learned Counsel also submitted that though the respondent had moved the Family Court at Vijayawada, in view of the notification issued under the Family Courts Act, 1984 for establishment of the Family Courts, it can be definitely said that even on admitted facts, the Family Court at Vijayawada has no jurisdiction and just for the purpose of convenience the respondent had invoked the jurisdiction of the Family Court at Vijayawada. It was also contended that at any rate, to avoid conflicting decisions, it is a fit matter where the matter pending before the Family Court, Vijayawada has to be necessarily transferred to the Court of Additional District Judge, Krishna to be tried along with G.W.O.P. No. 177 of 2002.

4. On the contrary, Sri Subrahmanyam, the learned Counsel representing the respondent with all vehemence had contended that Section 20 of the Family Courts Act, 1984, is having overriding effect. The learned counsel also had drawn my attention to Section 3 of the Family Courts Act, 1984 and also Section 7(1)(g) of the said Act and had contended that in view of the aforesaid provisions, the Family Court at Vijayawada had rightly entertained the matter filed by the respondent and only with a view to put the respondent into trouble and also with a view to delay the proceedings the present Transfer Civil Miscellaneous Petition is thought of by the petitioners. The learned counsel also

submitted that even on admitted facts, especially in view of the tender age of the child, the mother is the natural guardian and in any view of the matter, the welfare of the child being of paramount importance, even if all the facts and circumstances are taken into consideration, it is a fit case where the matter pending on the file of Additional District Judge, Krishna be transferred to the Family Court, Vijayawada or suitable directions are to be given for disposal of the respective matters by the respective Courts.

5. Heard both the counsel and also perused the material available on record.

6. The dispute between the parties is in relation to the custody of the child. It is needless to say that the welfare of the minor child is of paramount importance in matters of this nature. No doubt, several allegations are made by the petitioners to the effect that the minor child was brought up by them only with love and affection and the petitioners are taking every care relating to her welfare and also explained the circumstances under which the petitioners were compelled to move the Court for appropriate reliefs.

7. The respondent, in G.W.O.P. No. 177 of 2002 filed on the file of Family Court, Vijayawada, also had made several allegations in detail and had also stated that she is more interested in the welfare of the child and in fact she had signed the application also as guardian for joining the minor daughter in U.K.G. in the year 2000 in Holy Cross Convent at Gudivada. The present proceeding is only a transfer application and no doubt several aspects in detail relating to the jurisdiction of both the Courts had been advanced by the learned Counsel. It is no doubt true that to avoid conflicting decisions, it is always advisable and desirable, if both the matters are tried by one and the same Court. As far as the Family Court, at Vijayawada is concerned, the same is having jurisdiction only over the metropolitan area of Vijayawada. No doubt, the counsel for the respondent with all vehemence had contended that the residence of the child at Gudivida is only a temporary residence and hence this aspect need not be seriously considered at this stage, or at any rate, this is a matter to be decided at the appropriate stage.

8. I had gone through the proceedings initiated by both the parties. Prima facie I am satisfied that the minor child is being brought up by the petitioners. No doubt, the respondent/mother is the natural guardian. Be that as it may, in view of the fact that the Family Court at Vijayawada is only having jurisdiction over the metropolitan area of Vijayawada, I am of the opinion that G.W.O.P. No. 177 of 2002 on the file of Family Court, Vijayawada has to be transferred and tried along with G.W.O.P. No. 137 of 2002 on the file of Additional District Judge, Krishna, for the reasons further detailed infra.

9. Section 9 of the Guardians and Wards Act, 1890, dealing with Court having jurisdiction to entertain application, reads as follows:

(1) If the application is with respect to the guardianship of the person of the minor, it shall be made to the District Court having jurisdiction in the place where the minor ordinarily resides.

(2) If the application is with respect to the guardianship of the property of minor, it may be made either to the District Court having jurisdiction in the place where the minor ordinarily resides or to a District Court having jurisdiction in a place where he has property.

(3) If an application with respect to the guardianship of the property of a minor is made to a District Court other than that having jurisdiction in the place where the minor ordinarily resides, the Court may return the application if in its opinion the application would be disposed of more justly or conveniently by any other District Court having jurisdiction.

10. Section 3 of the Family Courts Act, 1984 dealing with Establishment of Family Courts, specifies as hereunder:

(1) For the purpose of exercising the jurisdiction and powers conferred on a Family Court by this Act, the State Government, after consultation with the High Court, and by notification,-

(a) shall, as soon as may be after the commencement of this Act, establish for every area in the State comprising a city or town whose population exceeds one million, a Family Court;

(b) may establish Family Courts for such other areas in the State as it may deem necessary.

(2) The State Government shall, after consultation with the High Court, specify, by notification, the local limits of the area to which the jurisdiction of a Family Court shall extend and may at any time, increase, reduce or alter such limits.

Likewise, Section 7 of the said Act deals with jurisdiction and Section 7(1)(g) of the Act covers a suit or a proceeding in relation to a guardianship of the person or the custody of, or access to, any minor. It is no doubt true that as pointed out by the counsel for the respondent/mother, Section 20 of the Family Courts Act, 1984 specifies that the Act is having overriding effect and the said provision reads as hereunder:

The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

11. Here is a case where the jurisdiction of this Court is invoked u/s 24 of the Code to transfer a proceeding from a particular Court to another Court to be tried along with another proceeding. As already narrated supra, on the face of the allegations, inasmuch as the minor is residing at Gudivada, the District Court at Machilipatnam alone is having jurisdiction to entertain the said O.P. and rightly it was done so. No doubt, the mother of the child may be the natural guardian and as per her convenience, inasmuch as she is residing at Vijayawada, had thought of invoking the jurisdiction of the Family Court at Vijayawada having a limited jurisdiction, in the sense, the territorial limits of the said

Court, by virtue of the notification is over the metropolitan area of Vijayawada alone. Hence, viewed from any angle, I am of the considered opinion that Section 20 of the Family Courts Act, 1984 will not come in the way of exercising the powers u/s 24 of the Code by this Court and hence I am not inclined to accept with the submission or objection raised by the learned Counsel for the respondent. I am not inclined to touch upon the other merits and demerits of the matter since I am conscious of the fact that ultimately any such attempt on the part of this Court may prejudice the rights of the parties which are to be decided in the pending O.Ps. In view of the aforesaid observations made by me, I am of the considered opinion that it is a fit case where the Transfer Civil Miscellaneous Petition is to be ordered as prayed for and accordingly the same is ordered.

12. It is also brought to my notice that inasmuch as this is a matter involving the custody of the child, there may be some delay in disposal of such matters. It is needless to observe that the learned Additional District Judge may take appropriate steps to dispose of both the matters as expeditiously as possible, at the earliest, and at any rate, within a period of six months, after giving due opportunity to the parties concerned.