

N. Kavitha Vs. N. Veeraiah

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Court : Andhra Pradesh

Decided On : Dec-27-2004

Reported in : 2005(2)ALD383; 2005(1)ALT664

Judge : D.S.R. Varma, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 24

Appeal No. : Transfer Civil Misc. Petition No. 515 of 2004

Appellant : N. Kavitha

Respondent : N. Veeraiah

Advocate for Def. : K. Durga Prasad, Adv.

Advocate for Pet/Ap. : P. Ravi Sankar, Adv.

Judgement :

ORDER

D.S.R. Varma, J.

1. Heard the learned counsel for both parties. Perused the material placed before me.

2. Wife filed this petition seeking transfer of the O.P. No. 325 of 2003, filed by her husband for divorce, pending on the file of the Court of II Additional Senior Civil

Judge, Rangareddy at L.B. Nagar to the Court of Senior Civil Judge, Khammam to be tried along with O.P. No. 133 of 2004 filed by her for restitution of conjugal rights.

3. The grounds urged are that the petitioner filed O.P. No. 133 of 2004 for restitution of conjugal rights at Khammam, recently, and that it would be inconvenient for her to go to Rangareddy to contest the OP filed by her husband for divorce, because she is a lonely lady, living with her parents at Thamminenipalem village in Khammam District.

4. Learned Counsel for the respondent contends that though conciliation proceedings were initiated they went in vain and that the petitioner filed the O.P. for restitution of conjugal rights much later to the filing of divorce O.P. by the respondent. He further contends that in two or three adjournments, trial in O.P. filed by the respondent for divorce is going to be commenced. He contends further that the respondent is taking care of two children and he has been attending to their day-to-day needs.

5. In this regard, it is to be seen that, no doubt, the inconvenience that is likely to be caused to the-wife is a factor to transfer the O.P. filed by the husband to the place where the wife has been residing. But the important aspect to be borne in mind in this regard is that the respondent filed the O.P. for divorce and petitioner filed the O.P. for restitution of conjugal rights, admittedly, after the conciliation proceedings initiated during the course of the O.P. for divorce filed by the respondent has been pending. The other aspect that is to be taken into consideration is that it is the respondent, who alone is taking care of the two children by attending to their day-to-day needs, as a responsible father. Petitioner, who has been staying away from her husband and children, obviously, and in my considered opinion, is not evincing any interest in the welfare of the children, nor she is asking for the custody of the children. Prima facie, it appears that the petitioner initiated the present petition seeking transfer of the O.P. filed by her husband only consequent upon the failing of conciliation talks. Let alone the feuds between the husband and wife, petitioner, being the mother of the children had little concern about them.

6. In fact, if this petition is allowed, it is the husband who has to leave the children and their day-to-day necessities to the mercy of others to go to Khammam in order to contest both the O.Ps. Whereas the petitioner, who is the mother, seeks all comforts ignoring the comfort of the children and seeking transfer of the O.P. filed by her husband for divorce.

7. Another important aspect to be borne in mind is that the O.Ps, in contrast, are for restitution of conjugal rights filed by the petitioner at Khammam, and for a decree of divorce filed by the husband at L.B. Nagar in Rangareddy District. Perhaps, the evidence in both the O.Ps. may be common, since the facts and circumstances in both the cases are the same.

8. The general principle as enunciated by the Apex Court, no doubt is, that inconvenience of the wife should be taken into account.

9. However, having regard to the peculiar facts and circumstances of the case, instead of allowing this transfer petition by withdrawing the OP filed by the husband at L.B. Nagar in Rangareddy and to transfer it to Khammam to be tried along with the OP filed by the petitioner, I feel it expedient to put the other way round, i.e. to transfer the OP No. 133 of 2004 filed by the petitioner for restitution of conjugal rights, pending on the file of the Court of the Senior Civil Judge, Khammam to II Additional Senior Civil Judge, at L.B. Nagar in Rangareddy District to be tried along with O.P. No. 325 of 2003, filed by the husband-respondent for a decree of divorce, keeping in view the inconvenience that is likely to be caused to the husband, primarily to the children.

10. At this stage, learned counsel for the respondent submitted that the respondent has agreed to bear the expenses to be incurred by the petitioner to visit the Court at Rangareddy to contest the O.Ps. Recording this submission, the Tr. CMP is disposed of in the following terms:

'OP No. 133 of 2004 pending on the file of the Court of Senior Civil Judge, Khammam shall be withdrawn from the file of that Court and be transferred to the Court of II Additional Senior Civil Judge at L.B. Nagar in Rangareddy to be tried along with O.P. No. 325 of 2003, subject to the condition of the respondent paying

Rs. 500/- to the petitioner for her each visit to L.B. Nagar in Rangareddy to contest the OPs'.

11. It is needless to mention here that the transferee Court shall not insist upon the presence of the petitioner herein, if not required.

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