

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.07.2015

CORAM :

THE HONOURABLE MR. JUSTICE N.KIRUBAKARAN

Tr.C.M.P.Nos.476 & 477 of 2014 and
M.P.Nos.1 of 2014 in Tr.C.M.P.Nos.476 & 477 of 2014

Abhinaya @ Ananya ... Petitioner in both Tr.C.M.Ps

vs.

Senthil Kumar ...Respondent in both Tr.C.M.Ps

Prayer in Tr.C.M.P.No.476 of 2014:- This petition has been filed under Section 24 C.P.C., to transfer the the Suit in O.S.No.2 of 2010 now pending on the file of the Family Court at Madurai to be tried and decided by the Family Court, Chennai.

Prayer in Tr.C.M.P.No.477 of 2014:- This petition has been filed under Section 24 C.P.C., to transfer the H.M.O.P.No.345 of 2011 now pending on the file of the Family Court at Madurai to be tried and decided by the Family Court at Chennai.

For Petitioner
in both Tr.C.M.Ps : Mr.M.Kamalanathan

For Respondent
in both Tr.C.M.Ps : Mr.V.Murugan

COMMON ORDER

The wife has come forward with Tr.C.M.P.No.476 of 2014 seeking to transfer the suit in O.S.No.2 of 2010 on the file of the Family Court, Madurai, filed by her, declaring that the marriage between the petitioner and the respondent registered on 10.11.2008 before the Sub Registrar - II, Dindigul, as null and void and for permanent injunction restraining the respondent from interfering with the petitioner's life, contending that he is the husband of the petitioner.

2. The petitioner/wife has come forward with Tr.C.M.P.No.477 of 2015 seeking to transfer the petition in H.M.O.P.No.345 of 2011, filed by the respondent/husband, for restitution of conjugal rights

pending on the file of the Family Court, Madurai to the file of the Family Court, Chennai on the ground that she is at present working in Chennai.

3. Heard Mr.M.Kamalanathan, learned counsel for the petitioner/wife and Mr.V.Murugan, learned counsel for the respondent/husband and also perused the records.

4. The suit in O.S.No.2 of 2010 filed by the petitioner and the petition in H.M.O.P.No.345 of 2011 filed by the respondent are pending. Though the respondent filed a petition questioning the jurisdiction of the Family Court, the said petition was dismissed and the same was confirmed in the revision as well by the Madurai Bench of this Court reiterating that the Family Court, Madurai alone has got jurisdiction. Thereafter only, the present petitions have been filed by the petitioner contending that she is working and residing in Chennai.

5. The learned counsel for the respondent would contend that having taken a stand that she is residing in Madurai and having filed a suit before the Family Court, Madurai and having reiterated that the Family Court, Madurai alone will have jurisdiction, it is not open for the petitioner to file the present transfer petitions to transfer the proceedings pending before the Family Court, Madurai to the Family Court, Chennai. The learned counsel would refer to Section 7 of the Family Act and would contend that the proceedings initiated by the petitioner would not come under a family dispute, so that, the Family Court at Madurai will have jurisdiction.

6. The learned counsel for the respondent has also categorically contended that since, the petitioner has contended that the Family Court, Madurai alone has got jurisdiction to entertain the suit filed by her, she is estopped from seeking transfer of the said suit to the Family Court, Chennai. He would rely on a judgment of the Hon'ble Supreme Court in Jeewanti v. Kishan Chandra (AIR 1982 SC 3) to contend that the place of residence of the parties will not confer jurisdiction and the definition of "reside" is by no means free from all ambiguity and is capable of variety of meanings according to the circumstances to which it is made applicable and the context in which it is found. Paragraph No.12 of the said judgment is extracted below:-

"12.In order to give jurisdiction on the ground of 'residence', something more than a temporary stay is required. It must be more or less of a permanent character, and of such a nature that the court in which the respondent is sued, is his natural forum. The word 'reside' is by no means free from all ambiguity and is capable of a variety of meanings according to the circumstances to which it is made applicable and the context in which it is found. It is capable of being understood in its ordinary sense of

having one's own dwelling permanently, as well as in its extended sense. In its ordinary sense 'residence' is more or less of a permanent character. The expression 'resides' means to make an abode for a considerable time to dwell permanently or for a length of time; to have a settled abode for a time. It is the place where a person has a fixed home or abode. IN Webster's Dictionary, 'to reside' has been defined as meaning 'to dwell permanently or for any length of time', and words like 'dwelling place' or 'abode' are held to be synonymous. Where there is such fixed home or such abode at one place the person cannot be said to reside at any other place where he had gone on a casual or temporary visit e.g., for health or business or for a change. If a person lives with his wife and children, in an established home, his legal and actual place of residence is the same. If a person has no established home and is compelled to live in hotels, boarding houses or houses of others, his actual and physical habitation is the place where he actually or personally resides."

7. In view of the said judgment, according to the learned counsel for the respondent, the Family Court, Chennai will not have any jurisdiction to entertain the suit filed by the petitioner/wife and the petition filed by the respondent/husband and hence, the petitioner cannot seek for transfer of the above cases to the Family Court, Chennai. Hence, he prays this Court to dismiss these petitions filed.

8. Though, a reference has been made with regard to the jurisdiction of the Family Court, Madurai, regarding the prayers sought for by the petitioner, explanation (b) of Section 7 of the Family Courts Act is capable of taking care of the suit. The suit filed by the petitioner before the Family Court is maintainable in view of the aforesaid explanation to Section 7. Therefore, the contention made by the learned counsel for the respondent is rejected.

9. It is useful to extract Section 7 (b) of the Act as follows:-

"7.(b) be deemed, for the purposes of exercising such jurisdiction under such law, to be a district Court or, as the case may be, such subordinate civil Court for the area to which the jurisdiction of the Family Court extends.

Explanation.-The suits and proceedings referred to in this sub-section are suits and proceedings of the following nature, namely:-

(a) a suit or proceeding between the parties to a marriage for a decree of nullity of marriage (declaring the marriage to be null and void or, as the case may be, annulling the marriage) or restitution of conjugal rights or judicial separation or dissolution of marriage;

(b) a suit or proceeding for a declaration as to the validity of a marriage or as to the matrimonial status of any persons;

(c) a suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them;

(d) a suit or proceeding for an order or injunction in circumstances arising out of a marital relationship;

(e) a suit or proceeding for a declaration as to the legitimacy of any person;

(f) a suit or proceeding for maintenance;

(g) a suit or proceeding in relation to the guardianship of the person or the custody of, or access to, any minor."

10. Merely because the petitioner originally filed the petition before the Family Court at Madurai and the same was reiterated by her upto High Court, it will not preclude her from filing any transfer petition on the plea that she is working in Chennai.

11. It is the convenience of the party which decides the jurisdiction especially, when the petitioner is a lady. Even Section 19 of the Hindu Marriages Act, would speak about a jurisdiction of the Court where the marriage was solemnized where the respondent at the time of presentation of petition resides or the parties to the marriage last resided together or in case if the wife is the petitioner where she is residing. Therefore, even as per Section 19 of the Act, it is only the place of residence of the wife alone would give the jurisdiction. At the time of filing the petition, she was residing at Madurai and therefore, she rightly filed the suit before the Family Court, Madurai and therefore, it is only for the sake of convenience, now, she has filed the present petitions and therefore, there is no bar for her to maintain the present petitions.

12.It is very difficult for the petitioner to travel from Chennai to Madurai to adduce evidence and to contest the matter, especially, when she is residing in Chennai, and working in Chennai. Moreover, the judgement relied upon by the learned counsel for the respondent reported in AIR 1982 SC 3 (cited supra) only support the case of the petitioner. The Hon'ble Supreme Court has categorically stated that the word "reside" is by no means free from all ambiguity and is capable of variety of meanings according to the circumstances, to which it is made applicable and the context in which it is found. So there is no fixed definition given in the said judgment in no way supports the case of the respondent.

13.In view of the above, both the Transfer Civil Miscellaneous for the sake of convenience, O.S.No.2 of 2010 filed by the petitioner and H.M.O.P.No.345 of 2011 filed by the respondent are transferred to the Family Court at Chennai for disposal. Since the matter is pending from the year 2010 onwards, it is appropriate to direct the Family Court, Chennai to dispose of the matter within a period of six months from the date of receipt of a copy of this order.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

To

1.The Family Court,
Madurai.

2.The Family Court,
Chennai.

+1 cc to Mr.M.Kamalanathan Advocate sr.39243

WEB COPY

Tr.C.M.P.Nos.476 & 477 of 2014

nm(co)
aa17/08/2015