

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.11.2015

CORAM :

THE HONOURABLE MS. JUSTICE R.MALA

Tr.C.M.P. No.845 of 2014

S.Sri Vidyaa

... Petitioner

Vs.

R.Sivan

... Respondent

Prayer:- Petition has been filed under Section 24 of C.P.C., to withdraw H.M.O.P.No.145 of 2014 on the file of the Sub-Court, Tirupattur and transfer the same to the Family Court, Chennai, enabling the petitioner to diligently prosecute the case.

For Petitioner : Mr.T.Jayaramaraj

For Respondent : Mr.S.V.Karthikeyan

O R D E R

The wife, who is the respondent in H.M.O.P.No.145 of 2014, has come forward with this petition to transfer the same from the file of the Sub-Court, Tirupattur, to the file of the Family Court, Chennai.

2.Learned counsel for the petitioner submitted that the respondent/husband has filed a petition in H.M.O.P.No.145 of 2014 for divorce on the file of the Sub-Court, Tirupattur. It is further submitted that the petitioner/wife is having two years old child and she is residing in Triplicane, Chennai. Further, the respondent is a politically influenced person and that she is facing life threat, when she has gone to Tirupattur for attending the Court. Therefore, she prays that the case may be transferred from the Sub-Court, Tirupattur, to the file of the Family Court, Chennai.

3.At this juncture, learned counsel for the respondent submitted that the case is now pending before the Sub-Court, Tirupattur, wherein presence of spouse is not mandatory. But whereas in the Family Court, presence of spouse is necessary for each and every hearing. He further submitted that the respondent/husband is doing business. If the case is

transferred from the Sub-Court, Tirupattur to the Family Court, Chennai, the respondent ought to have appeared before the Court for each and every hearing, which is difficult for him. Hence, he prayed for dismissal of the petition.

4.Considered the rival submissions made on both sides and perused the typed set of papers.

5.The marriage between the petitioner and respondent was performed on 09.04.2010. Due to the wedlock, the petitioner gave birth to a child, who is now two years old. The respondent/husband has filed a petition in H.M.O.P.No.145 of 2014 for divorce on the ground of desertion before the Sub-Court, Tirupattur. The petitioner/wife is residing in Triplicane, Chennai along with her child. It is true, appearance of spouse is mandatory for each and every hearing before the Family Court. As per the decision reported in 2000 (2) T.L.N.J.158 (Sudha v. Vaidyanathan), if the woman has the custody of any child, born out of wedlock, less than five years of age, the case is transferred to the Court as sought for by the woman. In the case on hand, the petitioner/wife is having two years old child and she apprehended life threat in the hands of her husband, when she used to attend the Court at Tirupattur. Furthermore, the respondent/husband is neither a Government servant nor working in a private firm, he is doing business. In case, if the respondent is not able to attend the Family Court, he may very well file an application before the Family Court, for dispense with his presence. Therefore, the petition in H.M.O.P.No.145 of 2014 is ordered to be withdrawn from the file of the Sub-Court, Tirupattur and transferred to the file of the Family Court, Chennai, for disposal in accordance with law. The Presiding Officer, Sub-Court, Tirupattur, is directed to transmit all the records pertaining to H.M.O.P.No.145 of 2014 to the file of the Family Court, Chennai, within a period of two weeks from the date of receipt of a copy of this order. सत्यमेव जयते

6.With the above direction, this Transfer Civil Miscellaneous Petition is disposed of. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

kj

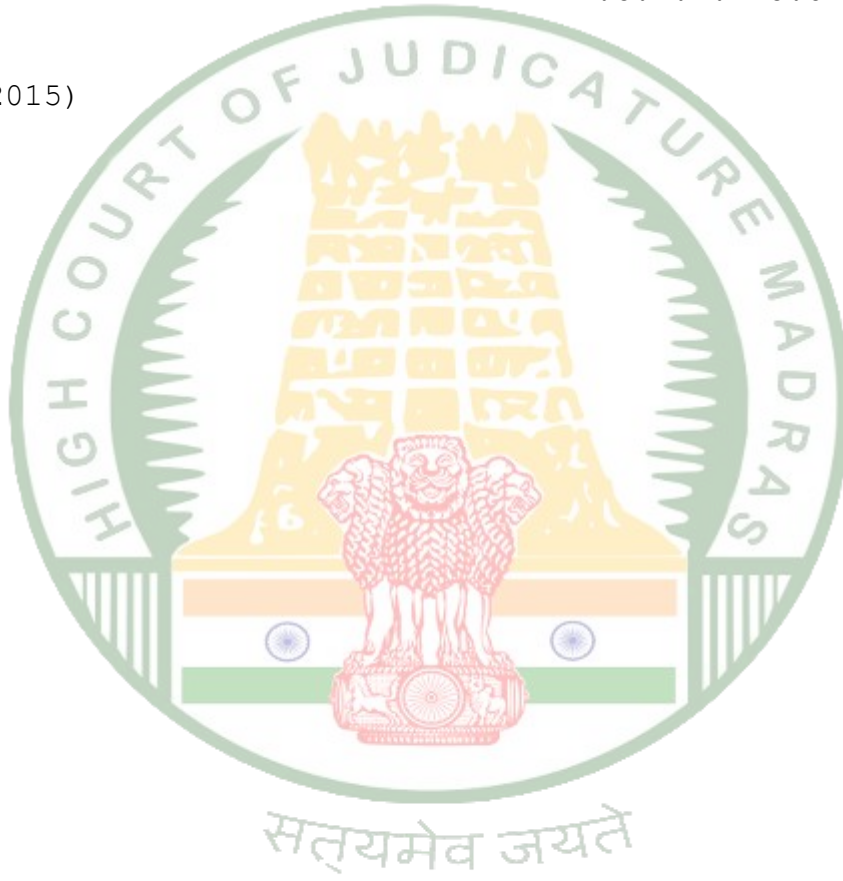
To

1.The Sub-Court,
Tirupattur.

2.The Family Court,
Chennai.

Tr.C.M.P. No.845 of 2014

SAI (CO)
CA(27/11/2015)



WEB COPY