

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.12.2015

CORAM :

THE HONOURABLE MS. JUSTICE R.MALA

Tr.C.M.P. Nos.568 and 570 of 2015
and
M.P.Nos.1 and 1 of 2015

V.Parvathi ... Petitioner in both the petitions
Vs.
N.Vijayakumar ... Respondent in both the petitions

Prayer in Tr.C.M.P.No.568 of 2015:- Petition has been filed under Section 24 of C.P.C., to withdraw and transfer G.W.O.P.No.2307 of 2015 pending before the Principal Family Court, Chennai to the District Court, Tirunelveli.
Prayer in Tr.C.M.P.No.570 of 2015:- Petition has been filed under Section 24 of C.P.C., to withdraw and transfer H.M.O.P.No.4005 of 2014 pending before the III Additional Family Court, Chennai to the Sub-Court, Tenkasi, Tirunelveli District.

For Petitioner : Mr.S.Stalin Muthu

For Respondent : Mrs.Thenmozhi Shivaperumal

C O M M O N O R D E R

The wife, who is the respondent in G.W.O.P.No.2307 of 2015 pending on the file of the Principal Family Court, Chennai, has come forward with Tr.C.M.P.No.568 of 2015 to transfer the same to the file of the District Court, Tirunelveli. She has also come forward with the petition in Tr.C.M.P.No.570 of 2015 to transfer H.M.O.P.No.4005 of 2014 pending on the file of the III Additional Family Court, Chennai, to the file of the Sub-Court, Tenkasi, Tirunelveli District for disposal in accordance with law.

2.Learned counsel for the petitioner submits that the respondent/husband has filed a petition in H.M.O.P.No.4005 of 2014 for divorce before III Additional Family Court, Chennai. He has also filed a petition in G.W.O.P.No.2307 of 2015 on the

file of the Principal Family Court, Chennai. He further submits that the petitioner/wife is residing in Tenkasi along with a child, who is two years old. Further, the wife is unemployed and hence, it is difficult for her to attend the Court at Chennai for each and every hearing. Therefore, he prays for transfer.

3. Resisting the same, learned counsel for the respondent/husband submits that the respondent/husband has already filed a petition in H.M.O.P.No.357 of 2014 for restitution of conjugal rights before the Family Court, Chennai. Since the petitioner/wife is not willing to resume in her matrimonial home, the same was dismissed as withdrawn. Subsequently, the respondent/husband has filed H.M.O.P.No.4005 of 2014 for divorce on the ground of desertion. She further submits that the respondent/husband is residing in U.S.A. Since the petitioner/wife did not appear in H.M.O.P.No.4005 of 2014, she was set *ex parte*. Immediately, she filed I.A.No.2929 of 2014 to set aside the *ex parte* order and the same was allowed. Subsequently, the petitioner/wife has filed transfer application in Tr.C.M.P.No.510 of 2015 before this Court for transfer H.M.O.P.No.4005 of 2014 from III Additional Family Court, Chennai, to the file of the Sub-Court, Ambasamudram, Tirunelveli District. Now H.M.O.P.No.4005 of 2014 is posted for trial. Since respondent/husband is residing in U.S.A., video conferencing system is available in the Family Court, Chennai, so it is conducive for him to get along with the trial before the Family Court, Chennai. It is also further submitted that the respondent/husband is ready to pay travel expenses and day costs to the petitioner/wife. Therefore, she prayed for dismissal of this petition.

4. Considered the rival submissions made on both sides and perused the materials available on record.

5. The marriage between the petitioner and respondent was performed on 07.03.2012 at Srivilliputhur. They were lastly residing at K.K.nagar, Chennai. Due to lawful wedlock, they blessed with a male child, who is now two years old. The petitioner/wife is residing in Tenkasi along with her child. The respondent/husband has already filed a petition in H.M.O.P.No.357 of 2014 for restitution of conjugal rights before III Additional Family Court, Chennai. At that time, the petitioner/wife has filed an application for transfer the same to the Sub-Court, Tenkasi. But she is not willing to resume in her matrimonial home. Hence, H.M.O.P.No.357 of 2014 was dismissed as withdrawn. Thereafter, the respondent/husband has filed H.M.O.P.No.4005 of 2014 for divorce on the ground of

desertion. Admittedly, the respondent/husband is residing in U.S.A. and hence, he is unable to attend the Family Court at Chennai. So he filed an application for examining him through video conferencing and that application was allowed.

6.As already stated that the petitioner/wife is residing in Tenkasi along with her two years old child. As per the guidelines laid down in 2000 (2) T.L.N.J.158 (Sudha v. Vaidyanathan), if the wife is having child below five years old, the case to be transferred to the Court where the wife sought for. So it is a fit case for order transfer. But there is no provision of video conferencing in the Sub-Court, Tenkasi. Under such circumstances, I am of the view, the case is to be transferred to the Family Court, Tirunelveli, which is having video conferencing system, instead of the Sub-Court, Tenkasi.

7.Accordingly, the petitions in H.M.O.P.No.4005 of 2014 and G.W.O.P.No.2307 of 2015 are ordered to be withdrawn from the file of the III Additional Family Court, Chennai & Principal Family Court, Chennai respectively and transferred to the file of the Family Court, Tirunelveli, for disposal in accordance with law. The Presiding Officer, III Additional Family Court, Chennai, is directed to transmit all the records pertaining to H.M.O.P.No.4005 of 2014 to the file of the Family Court, Tirunelveli, within a period of two weeks from the date of receipt of a copy of this order. Likewise, the Presiding Officer, Principal Family Court, Chennai, is directed to transmit all the records pertaining to G.W.O.P.No.2307 of 2015 to the file of the Family Court, Tirunelveli, within a period of two weeks from the date of receipt of a copy of this order. The Presiding Officer, Family Court, Tirunelveli, is directed to dispose of H.M.O.P.No.4005 of 2014 and G.W.O.P.No.2307 of 2015 within a period of three months from the date of receipt of the material papers, after examining the respondent/husband through video conferencing system.

8.With the above direction, the Transfer Civil Miscellaneous Petitions are disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1.The Family Court,
Tirunelveli.

2. III Additional Family Court,
Chennai.

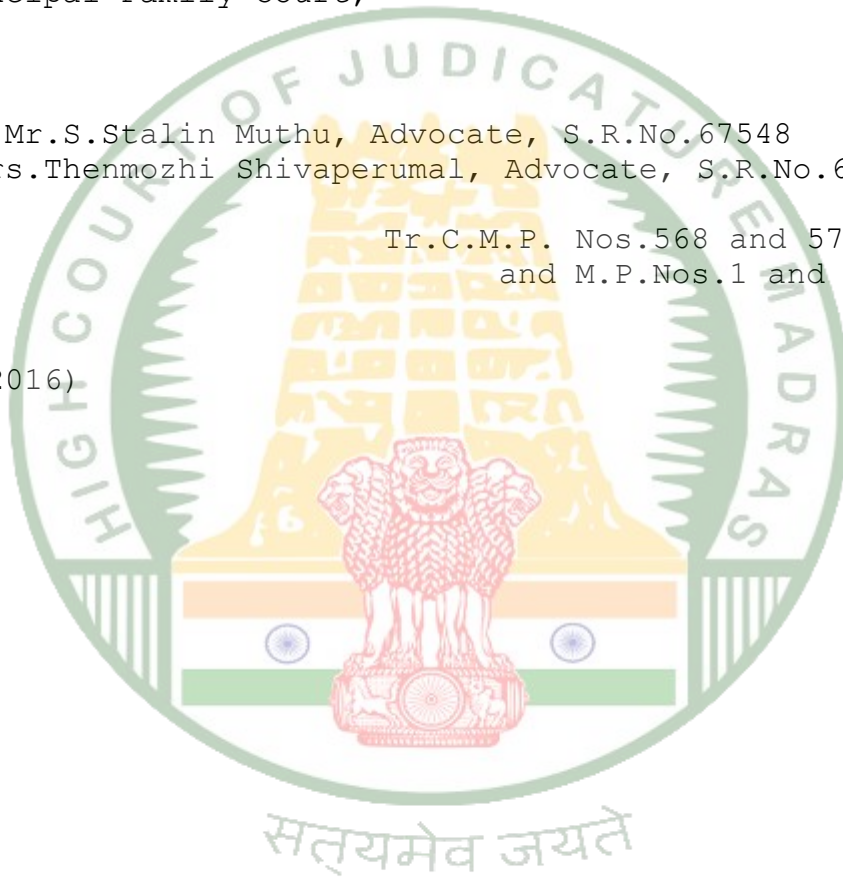
3.The Principal Family Court,
Chennai.

+2cc's to Mr.S.Stalin Muthu, Advocate, S.R.No.67548

+1cc to Mrs.Thenmozhi Shivaperumal, Advocate, S.R.No.67720

Tr.C.M.P. Nos.568 and 570 of 2015
and M.P.Nos.1 and 1 of 2015

SK(CO)
CA(07/01/2016)



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