

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED : 15.07.2015****CORAM****THE HONOURABLE MS.JUSTICE V.M.VELUMANI****Tr.C.M.P(MD)No.175 of 2015 and
M.P(MD)No.1 of 2015**

Divya Rekha

... Petitioner
Vs.

Selvaraj

... Respondent

Prayer: Transfer Civil Miscellaneous Petition is filed under Section 24 of Civil Procedure Code to withdraw H.M.O.P.No.70 of 2014 on the file of Subordinate Court, Srivilliputhur and transfer the same to the file of the Family Court, Madurai to be tried along with M.C.No.62 of 2015 on the file of the Family Court at Madurai.

For Petitioner	: Mr.P.Vinoth for Mr.M.Saravanan
For Respondent	: Mr.H.Arumugam

ORDER

The Transfer Civil Miscellaneous Petition is filed to withdraw H.M.O.P.No.70 of 2014 on the file of Subordinate Court, Srivilliputhur and transfer the same to the file of the Family Court, Madurai to be tried along with M.C.No.62 of 2015 on the file of the Family Court at Madurai.

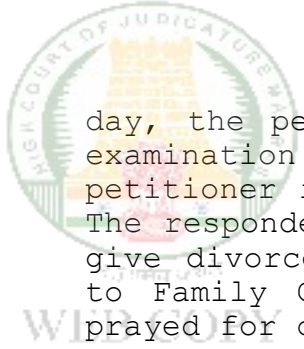
2. The petitioner herein is the wife and the respondent is the husband. The marriage between the petitioner and the respondent was solemnized on 16.05.2004. A female child was born on 17.06.2005 in the wedlock. Due to misunderstanding, the respondent did not take the petitioner to the matrimonial home. The respondent filed H.M.O.P.No.70 of 2014 before the Sub Court, Srivilliputhur for Restitution of Conjugal Rights. The petitioner filed M.C.No.62 of 2015, before the Family Court, Madurai.

3. Now, the petitioner is residing at Madurai and it is very difficult for the her to travel each and every hearing to attend H.M.O.P.No.70 of 2014 before the Sub Court, Srivilliputhur, along with her minor child. The petitioner is depending on her parents for her day-to-day expenses including travel expenses.

4. In such circumstances, the petitioner filed this petition to transfer the aforesaid H.M.O.P.No.70 of 2014, filed by the respondent husband, before the Sub Court, Srivilliputhur, to Family Court, Madurai to be tried along with M.C.No.62 of 2015.

5. Heard the learned counsel appearing for the parties.

6. The respondent filed counter affidavit. In the counter, it is stated that the respondent was examined in Chief and Cross-examined and evidence of the respondent was closed on 03.03.2015. H.M.O.P., was posted for adducing evidence on the side of the petitioner on 17.03.2015, 31.03.2015 and on 07.04.2015. She took adjournment and the HMOP was posted for Chief Examination of the petitioner on 21.04.2015. On that



day, the petitioner was examined in chief and it was posted for cross-examination of the petitioner on 28.04.2015. From that day onwards, the petitioner is not appearing before the Court for being cross-examination. The respondent not insisting and will not insist the petitioner either to give divorce or sign in the nomination form. If the case is transferred to Family Court, Madurai the entire proceedings would be stalled, and prayed for dismissal of the transfer petition.

7.From the pleadings, it is seen that the trial commenced in the HMOP on 10.02.2015. The evidence of the respondent was completed. After taking number of adjournments, the petitioner was examined in chief by filing proof affidavit. She did not appear for being cross-examined. From these facts, it is seen that trial in the HMOP is at final stage. Therefore, this is not a fit case to transfer the HMOP as sought for by the petitioner. The Transfer Civil Miscellaneous Petition is devoid of merits and is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

8.The HMOP is of the year 2014, the learned Subordinate Judge, Srivilliputhur is directed to dispose the HMOP No.70 of 2014 within three months from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To
The Subordinate Court, Srivilliputhur.

+1cc to M/S.R.J.Karthick, Advocate in Sr No.39219/15
+1cc to Mr.H.Arumugam, Advocate in Sr No.39050/15

Tr.C.M.P(MD)No.175 of 2015 and
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15.07.2015

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