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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.10.2015

CORAM:

THE HONOURABLE Dr.JUSTICE P.DEVADASS

Tr.C.M.P(MD) No. 344 of 2015

and MP(MD)No.1 of 2015

Ramya

..Petitioner/Respondent

Vs.

Rajasekaran

..Respondent/Petitioner

PRAYER: Transfer Civil Miscellaneous Petition filed under Section 24 of Civil Procedure Code, to withdraw the case in H.M.O.P.No.96 of 2015 pending on the file of Sub Court, Sivagangai and transfer the same to the file of the Family Court, Madurai.

For Petitioner :Mr.R.Udhayakumar
For Respondent :Mr.Fernand
for Mr.K.Gokul

O R D E R

This is a wife's transfer petition seeking transfer of her husband's divorce petition in H.M.O.P.No.96 of 2015 from Sub Court, Sivagangai to the Family Court, Madurai.

2. On 29.06.2014, in Tirupuvanam, in Sivagangai District petitioner married the respondent. Subsequently, difference of opinion arose between them. Now they are living separately. Respondent filed H.M.O.P.No.96 of 2015 in the Sub Court, Sivagangai for restitution of conjugal rights.

3. Now petitioner is residing at Anna Nagar, Madurai in her father's brother's house. It is stated that now she is doing I year M.A. (Tamil) in Madurai Kamaraj University College situate in Alagar Kovil Road, Madurai. She is also preparing for TNPSC Group-I Examination to become a Class-I Officer. In the circumstances, it is contended by the learned counsel for the petitioner that it causes her lot of inconvenience in travelling from Madurai to Sub Court, Sivagangai.

4. The learned counsel for the respondent has no objection for transferring the case from Sivagangai to Madurai, but, he wants transfer of the case to a Sub Court in Madurai instead of Family Court.

5.I have anxiously considered their submissions and Perused the materials on record.

6. Actually there is no big clash between the spouses. It is due to their ego. Husband wants return of his wife to his house, in other words, he seeks restitution of conjugal rights.

7. So far as the request for transfer of matrimonial case from one Court to another Court is concerned, the trend of law is to consider



the request of the wife, so that, she may face the matrimonial case without any difficulty including financial difficulty. Such request can be refused when transfer is sought for with a view to harass or intimidate him, his life will be in danger, if he goes to the Court situate in his wife's place. But he must give concrete material.

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8. Now in the instant case, although both sides belong to Tirupuvanam, now the petitioner/wife resides in Madurai for justifiable reasons. Therefore, a valid ground for transfer is made out. Further, the respondent also has no objection for transferring his case from Sivagangai to Madurai. However, his objection is that it can be transferred not to the Family Court, Madurai, but, to any one of the Sub Court in Madurai.

9. In the matter of transfer, the husband or wife cannot choose their Court. That apart, there is some legal obstacle in the request of the husband namely transfer of the case to a Sub Court in Madurai.

10. Till the constitution of a Family Court under Family Courts Act, 1984, the matrimonial matters relating to Hindus are being conducted before the Sub Courts and before the District Court being the higher Court. So far as the cases of the Christians are concerned, they were conducted under the Indian Divorce Act only before the District Court. So far as Muslims are concerned, the wife can institute a suit for dissolution of marriage under the dissolution of Muslim Marriage Act even before a Munsif's Court. The husband cannot institute a suit under the Mohamedian Law to divorce his wife however, he has the power of divorcing his wife by pronouncing 'Triple Thalak' without the intervention of the Court. But at the same time the husband can file a suit in a civil court seeking declaration that the 'Thalak' pronounced by him is in accordance with Islamic law. The wife can also file a suit before a civil court for a declaration that the 'Thalak' pronounced by her husband is not in accordance with law namely 'Shria'/Islamic Law. Further, the wife can always file a suit in civil court for claiming her Towar (mahar) amount.

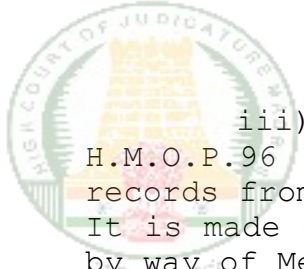
11. The consequence of constitution of a Family Court under Family Court's Act, 1984 in Madurai is that on and after such constitution, in Madurai city no court other than Family Court has jurisdiction to entertain the matrimonial matters (See Sections 7 and 8 of the Family Court's Act 1984). Further even any matrimonial matter pending in a Sub Court on the date of constitution of Family Court stand transferred to the Family Court. Thus, when once the Family Court is constituted in a place as in Madurai thereafter matrimonial matters have to be entertained only by Family Court and not by any other Court. In view of the position of law, matrimonial case initiated by the respondent necessarily have to be transferred only to the Family Court, Madurai not to a Sub Court in Madurai. In the circumstances, the request of the respondent that this case may be transferred to any one of the Sub Court in Madurai cannot be considered.

12. In view of the foregoings, ordered as under:

i) H.M.O.P.No.96 of 2015 pending on the file of the Sub Court, Sivagangai is transferred to Family Court, Madurai.

<https://hcservices.ecourts.gov.in/hcservices/>

ii) The learned Sub Judge, Sivagangai will send the entire case records immediately to the Family Court, Madurai.



iii) The learned Judge, Family Court, Madurai shall dispose of H.M.O.P.96 of 2015 within two months from the date of receipt of case records from the Sub Court, Sivagangai.

It is made clear that disposal of H.M.O.P.NO.96 of 2015 includes disposal by way of Mediation and Conciliation, Compromise and settlement.

13. In the result, this Transfer Miscellaneous Petition is disposed of. No costs. Consequently, connected M.P is closed.

Sd/-

Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To

1.The Principal District Judge, Sivagangai.

2.The Judge, Family Court, Madurai.

3.The Subordinate Judge, Sivagangai.

Copy to

The Registrar (Judicial),
Madurai Bench of Madras High Court,
Madurai.

+1cc to M/s.Gokul, Advocate in SR.No.62564

+1cc to M/s.K.Udayakumar, Advocate in SR.No.62381

Tr.C.M.P(MD)NO.344 of 2015
and M.P.(MD) No. 1 of 2015
26.10.2015

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PBK/AN-MP 05/11/2015 ::3P-7C::