

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

TR CMP NO.732 OF 2015

AND MP NO.1 OF 2015

K.Thamizh

... Petitioner

Versus

K.T.Boopathy

... Respondent

PRAYER: Petition filed under Section 24 of the Code of Civil Procedure with a prayer to withdraw H.M.O.P.No.106/2015 pending on the file of the Subordinate Court, Gopi and transfer the same to the file of the Family Court, Pondicherry.

For Petitioner : Mr.H.Manojin

For Respondent : Mr.Andrew Vivek Manohar

O R D E R

The respondent initiated a proceedings in H.M.O.P.No.106 of 2015, before the Principal Subordinate Court at Gobichettipalayam, invoking Section 9 of the Hindu Marriage Act, 1955.

2. The petitioner, who is stated to be a permanent resident of Pondicherry, has come up with this petition for transfer.

3. The respondent filed a counter affidavit, wherein it was indicated that the petitioner is presently residing at Chennai and as such, there is no need for transferring the proceedings from Gobichettipalayam to Pondicherry.

4. The learned counsel for the petitioner contended that the petitioner got her daughter admitted in L.K.G., at Chennai and she is staying in a rental flat along with her

child. According to the learned counsel, the petitioner used to go to Pondicherry during the weekend and would come back on every Monday. The learned counsel further contended that immediately after the completion of L.K.G., by her daughter, she would go back to Pondicherry and reside her. The learned counsel therefore, seeks an order for transfer.

5. The learned counsel for the respondent by placing reliance on the counter affidavit filed by the respondent contended that being a resident of Chennai, the petitioner is not entitled to have the matter transferred from Gobichettipalayam.

6. The respondent initiated the proceedings before the Principal Subordinate Court, Gobichettipalayam, praying for a decree of restitution of conjugal rights. The application was opposed by the petitioner.

7. The petitioner has come up with this petition for transfer on the ground that being a permanent resident of Pondicherry, it would not be possible for her to travel from Pondicherry to Gobichettipalayam, for the purpose of defending the proceedings in H.M.O.P.No.106 of 2015.

8. The respondent has taken up a contention that the petitioner is presently residing at Chennai and as such, it would not be necessary to transfer the proceedings to a Court at Pondicherry. The petitioner has given her own explanation for the said contention. According to the petitioner, she was compelled to stay at Chennai in connection with her daughter's study. According to the petitioner, immediately after this academic year, she would shift her residence to Pondicherry to continue the education of her daughter there.

9. Section 19(iii-a) of the Hindu Marriage Act, permits the wife to initiate matrimonial proceedings before the Court in whose jurisdiction she is residing at the time of institution of proceedings.

10. The petitioner in her affidavit filed in support of this transfer petition explained her difficulties in appearing before the Subordinate Court at Gobichettipalayam. I am therefore of the view that the transfer petition deserves to be allowed.

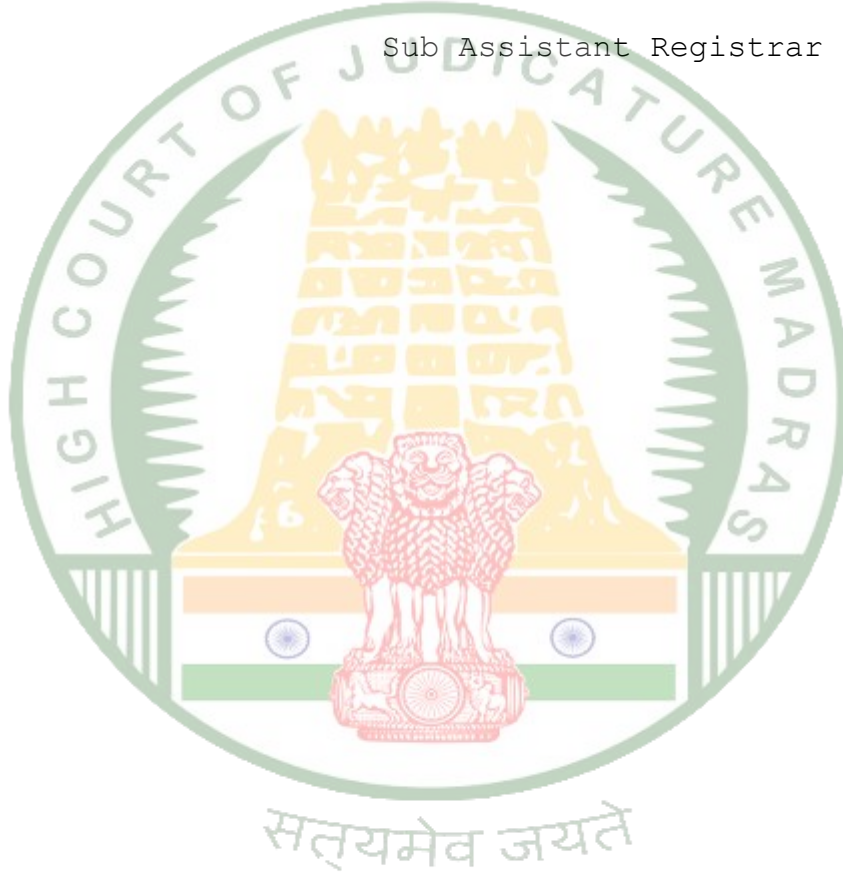
11. The proceedings in H.M.O.P.No.106 of 2015 is withdrawn from the file of Principal Subordinate Court, Gobichettipalayam, and is transferred to the file of Family Court, Pondicherry, for disposal on merits.

12. The Transfer Civil Miscellaneous Petition is allowed as indicated above. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar



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To

1.The Principal Subordinate Judge
Gobichettipalayam.

2.The Family Court
Pondicherry

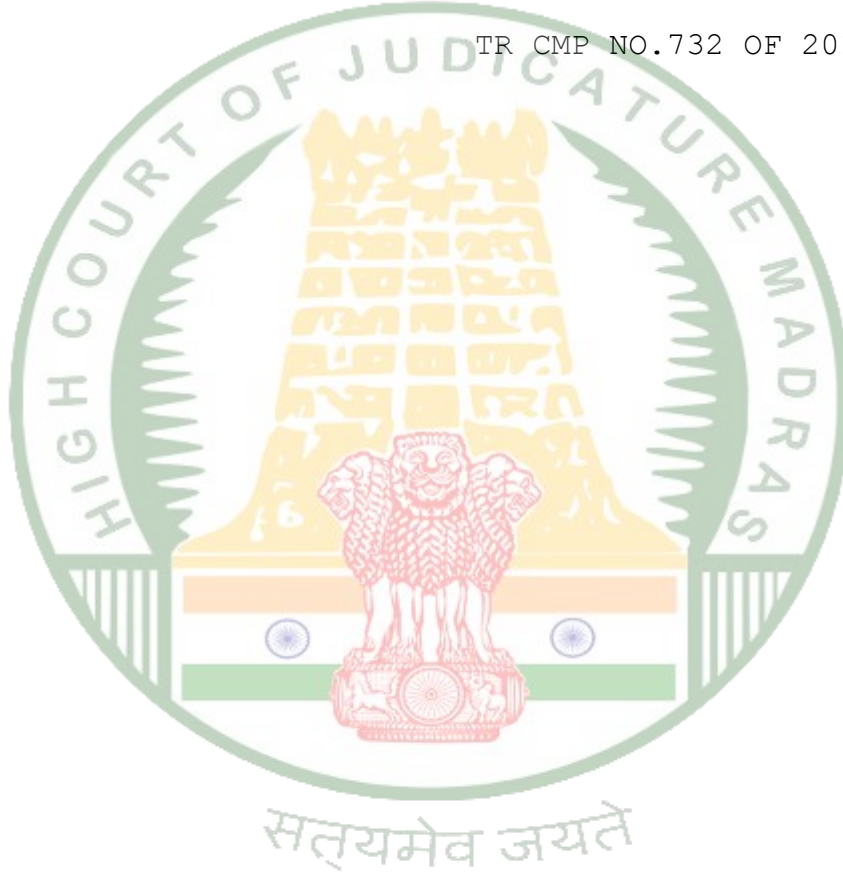
+1cc to Mr.P.V. Rajeswari, Advocate, S.R.No.66363

+1cc to Mr.Andrew Vivek Manoch, Advocate, S.R.No.66369

nri (CO)

md(22/12/2016)

TR CMP NO.732 OF 2015



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