

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 31.03.2016

CORAM

THE HONOURABLE Mr. JUSTICE P.R.SHIVAKUMAR

Tr.C.M.P.No.119 of 2016

and C.M.P.No.2718 of 2016

Mrs.Amsavalli @ Malar ... Petitioner

Vs

Viji @ Vijay ... Respondent

Transfer Civil Miscellaneous Petition filed under Section 24 of C.P.C. to withdraw H.M.O.P.No.3768/2015 on the file of II Additional Family Court Judge, Chennai and transfer the same to the Principal Sub Judge court at Tindivanam.

For Petitioner : Ms.T.Shyamala Chandrasekar

For Respondent : Mr.R.Ramkumar

O R D E R

Heard both sides.

2. The wife is the petitioner and the husband is the respondent in the transfer Civil Miscellaneous Petition. The petitioner has filed H.M.O.P.No.72/2015 under Section 13(1)(i-a) of the Hindu Marriage Act, 1955 on the file of the Principal Subordinate Judge, Tindivanam for a decree of divorce. The husband has filed H.M.O.P.No.3768 of 2015 on the file of II Additional Family Court, Chennai for restitution of conjugal rights under Section 9 of the Hindu Marriage Act, 1955. The wife has now come forward with the present petition for transferring H.M.O.P.No.3768 of 2015 pending on the file of II Additional Family Court, Chennai to the file of Principal Subordinate Judge, Tindivanam, within whose jurisdiction she resides.

3. Admittedly, the parties are Hindus and their marriage was solemnised in accordance with the provisions of the Hindu Marriage Act, 1955. The O.P. for dissolution of marriage by a decree of divorce also came to be filed under Section 13[1][i] of the Hindu Marriage Act, 1955. Section 19[iii-a] of the Hindu Marriage Act, 1955 has been included in the statute to protect the interest of the wife so far as the selection of jurisdiction is concerned. Though the husband's petition can be filed in the Courts having jurisdiction over the place of marriage, place wherein the respondent/wife resides or where both the husband and wife last resided together, sub clause [iii-a] enables the wife to file the petition in the Court having jurisdiction over the place in which she resides. Such a concession is not available to the husband, namely, to file a suit [OP] in a Court having jurisdiction over the place in which he resides.

4. The said provision has to be interpreted in a way beneficial to the wife. The legislature clearly intended to benefit the wife and such a benefit conferred on the wife cannot be lightly denied, unless there shall be lack of bonafide in seeking transfer of the case. In fact, the Supreme Court, way back in 2001, held that matrimonial proceedings filed by the husband can be sought to be transferred to the court having jurisdiction over the place wherein the wife is living, on the ground of convenience.

5. In Sumita Singh vs. Kumar Sanjay and Another reported in AIR 2002 SC 396, the Hon'ble Supreme Court held that a wife living at Delhi could seek the transfer of the the matrimonial proceedings initiated by her husband in Ara, which is about 1100 Kms from Delhi to a court in Delhi on the ground of inability to travel the said distance as she was residing with her parents at Gurgaon.

6. Similar is the view expressed by the Supreme Court in Vinitha Jitesh Tolani @ Manmeet Laghmani vs. Jitesh Kishore Tolani reported in 2010 (6) Bom. C.R.145, where the Supreme Court transferred husband's petition from the Court of Civil Judge at Goa to the Family Court at Delhi and dismissed the petition filed by the husband seeking the trasnfer of the wife's petition filed against the husband.

7. A Division Bench of this court in R.Sridharan vs. Presiding Officer, Principal Family Court, Chennai and R.Sukanya reported in (2010) 4 CTC 822 interpreting Section 19(iii-a) of the Hindu Marriage Act, 1955 to be a benevolent provision intending to confer benefit on the wife in respect of the choice of jurisdiction, chose to make an observation that such a provision meant for the benefit of women of our country should be given a meaningful interpretation by the court. The relevant paragraph is extracted hereunder:

"22. While considering a provision like section 19 (iii-a) of the Hindu Marriage Act, the objects and reasons which prompted the parliament to incorporate such a provision has also to be taken note of. Sub clause (iii-a) was inserted in Section 19 with a specific purpose. Experience is the best teacher. The Government found the difficulties faced by women in the matter of initiation of matrimonial proceedings. The report submitted by the Law Commission as well as National Commission for Women, underlying the need for such amendment so as to enable the women to approach the nearest jurisdictional court to redress their matrimonial grievances, were also taken note of by the Government. Therefore such a beneficial provision meant for the women of our Country should be given a meaningful interpretation by Courts."

If a meaningful interpretation to the said provision (Section 19 (iii-a) of the Hindu Marriage Act, 1955) is made, then the plea of the wife for transferring the matrimonial proceedings instituted against her by her husband in a court within whose jurisdiction her place of residence does not come, to a court having jurisdiction over her place of residence has to be construed as an attempt to avail such benefit.

8. The above said observation shall not apply in cases of lack of bonafide on the part of the wife in seeking such transfer, for example, wife shifting her residence after receiving summons in the matrimonial proceedings with a view to seek transfer of the proceedings to the other court.

9. In the present case, the address of the petitioner (wife) in the Tr.CMP has been furnished as "No.10, R.S.Pillai Lane, Periyasamy Street, Tindivanam - 604 001". The OP filed by the husband bears the address of the petitioner as "No.15, Periyasamy Street, R.S.Palli Street, Tindivanam Post, Tindivanam Taluk, Villupuram Post. If at all, the husband wanted not to harass the wife by making her to come over to Chennai from Tindivanam to defend the case, he could have very well filed the O.P. in the Court having jurisdiction over the place in which the wife is residing, namely, the Principal Sub Court, Tindivanam. As he has not done so, the petitioner has been forced to approach this Court with the present petition seeking such a transfer. This Court does not find any lack of bonafide or malafide in the prayer made by the petitioner seeking transfer of the H.M.O.P.No.3786 of 2015 from the file of the II Additional Family Court, Chennai to the file of the Principal Subordinate Court, Tindivanam.

Accordingly, the transfer civil miscellaneous petition is allowed and H.M.O.P.No.3768 of 2015 is withdrawn from the file of the II Additional Family Court, Chennai and transferred to the file of the Principal Subordinate Court, Tindivanam. Consequently, the connected Miscellaneous Petition is closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

asr

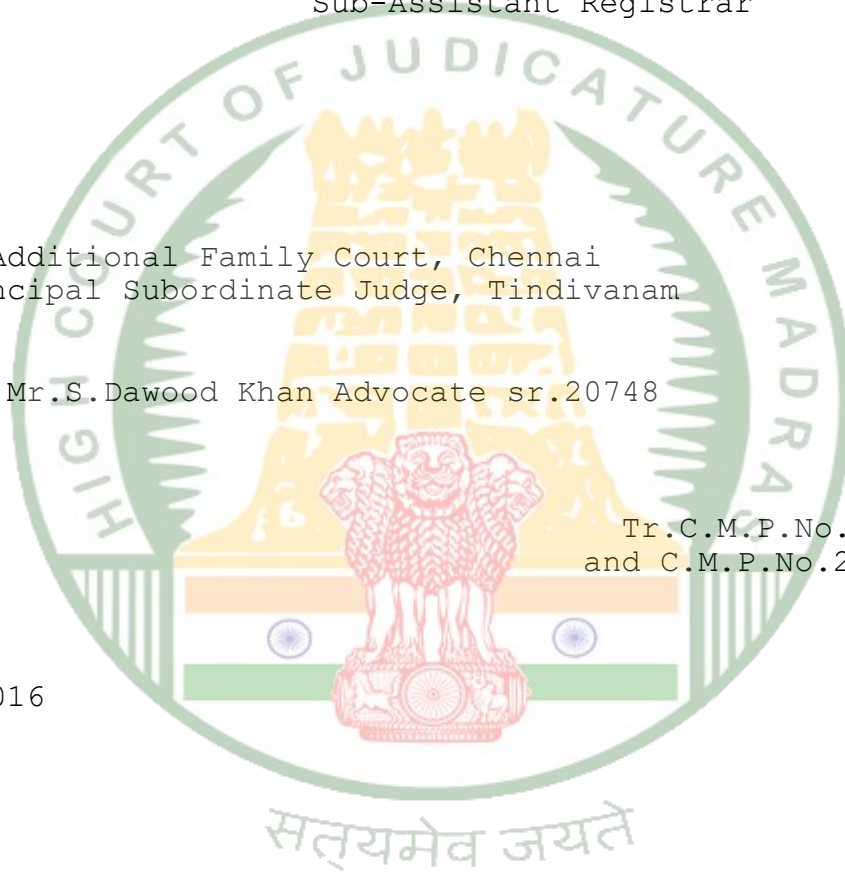
To

- 1.The II Additional Family Court, Chennai
- 2.The Principal Subordinate Judge, Tindivanam

+2 ccs to Mr.S.Dawood Khan Advocate sr.20748

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