

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.04.2016

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

TR.C.M.P.No.171 of 2016

&

C.M.P.No.4787 of 2016

S.Vijayalakshmi ... Petitioner/Respondent

Vs.

P.Sundara Sankara Narayanan ... Respondent/Petitioner

Transfer Civil Miscellaneous Petition filed under Section 24 of Civil Procedure Code praying to withdraw H.M.O.P.No.188 of 2014 on the file of the III Additional Judge, Family Court, Chennai and to transfer the same to the file of Subordinate Court, Sankarankoil.

For Petitioner : Mr.R.Chithiraputhiran

For Respondent : Ms.C.Uma

O R D E R

The respondent has entered appearance through counsel. Respondent has also filed a counter. The arguments advanced on both sides are heard.

2. The petitioner is the wife and the respondent is the husband. The respondent has filed H.M.O.P.No.188 of 2014 on the file of the Family Court, Chennai, which is now pending on the file of III Additional Judge, Family Court, Chennai for the relief of a declaration that the marriage between the two is null and void. The respondent therein, who is the petitioner in the present Transfer Civil Miscellaneous Petition, after initial appearance, failed to file counter statement within the time allowed by the statute and within the time extended by the Court below. The same led to the passing of an order dated 27.03.2015 setting her ex parte. The case stood adjourned to 21.05.2015 for taking ex parte evidence. At that point of time, the petitioner herein filed an application I.A.No.2189 of 2015 praying for an order

setting aside the order dated 27.03.2015 setting her ex parte. The said application was allowed by the trial Court on 28.10.2015.

3. Thereafter, apprehending that the petitioner herein was trying to prolong the case, the respondent herein approached this Court with C.R.P (PD) No.4741 of 2015 under Article 227 of the Constitution of India for a direction to the trial Court to dispose of the above said H.M.O.P within a time to be prescribed by this Court. A learned single Judge of this Court, after appearance of the respondent therein and after hearing both sides, allowed the Civil Revision Petition by order dated 27.01.2016 and issued a direction to the trial Court to dispose of the H.M.O.P.No.188 of 2014 as expeditiously as possible, preferably within a period of one year from the date of receipt of a copy of the said order. The present Transfer Civil Miscellaneous Petition came to be filed nearly 1 ½ months after the said order came to be passed.

4. No doubt the Parliament intended to confer a benefit on the wife by introducing Clause (iii-a) to Section 19 of the Hindu Marriage Act prescribing the Court having jurisdiction over the place of her residence as one of the jurisdictional Court for the hearing of the matrimonial original petitions, which benefit is not available to the husband. It is also true that in a number of cases, this Court as well as the Supreme Court has held that the said benevolent provision should be given a liberal consideration so as to ensure that the benefit sought to be conferred on the wife should not be abridged or nullified. However, there cannot be a blanket preposition that in all cases where the wife seeks the transfer of the original petition filed by the husband in a jurisdictional Court to the Court having jurisdiction over the place wherein the wife resides, her prayer should be accepted invariably without considering the bonafide of the wife in seeking such transfer. Suppose the petitioner in the present Transfer Civil Miscellaneous Petition had approached this Court for such a transfer immediately after receiving summons in the original petition or atleast before suffering an order setting her ex parte or before submitting herself to the Court in which the original petition is pending by filing an application to set aside the ex parte order, this Court would have arrived at a conclusion that there is no lack of bonafide. On the other hand, since the petitioner suffered an order setting her ex parte in the original petition, which was subsequently set aside on her application and since she also suffered an order in the hands of this Court for the speedy disposal of the H.M.O.P and only thereafter she has approached this Court with the present petition for transfer, this Court is of the considered view that the present prayer for transfer lacks in bonafide and it has been filed with a view to prolong

the case as long as possible. Hence, the benefit of Section 19(iii-a) of the Hindu Marriage Act in this case shall not be extended to the petitioner herein. For all the reasons stated above, this Court comes to the conclusion that the petition deserves dismissal.

Accordingly, the Transfer Civil Miscellaneous Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-  
Assistant Registrar(CS V)

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Sub Assistant Registrar

gpa

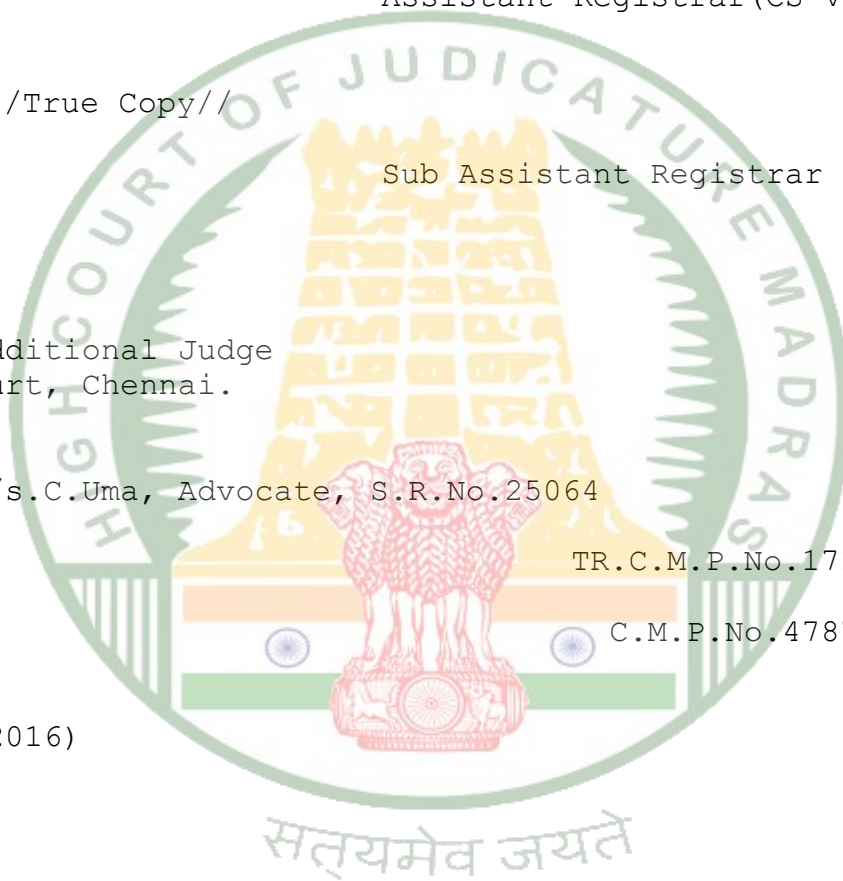
To

The III Additional Judge  
Family Court, Chennai.

+1cc to M/s.C.Uma, Advocate, S.R.No.25064

TR.C.M.P.No.171 of 2016  
&  
C.M.P.No.4787 of 2016

GJ II(CO)  
CA(11/05/2016)



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