

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

Transfer CMP No.459 of 2016 and

CMP.No.12372 of 2016

J.K.Kousalya

...Petitioner

versus

K.Puviarasu

...Respondent

PRAYER: Tr.C.M.P. filed under Section 24 of C.P.C., to withdraw H.M.O.P.No.3732 of 2015 pending before the Hon'ble II Additional Family Court, Chennai and transfer the same to the Hon'ble Subordinate Court of Chidambaram to be tried along with HMOP No.88 of 2015.

For Petitioner : Mr.B.Srinivasan
For Respondent : Mr.S.Francis Ashok

O R D E R

The respondent initiated proceedings in HMOP No.3732 of 2015 before the II Additional Family Court at Chennai, praying for a decree of divorce. The petitioner, on the other hand, filed HMOP No.88 of 2015 before the Sub-Court at Chidambaram, invoking Section 9 of the Hindu Marriage Act. The petitioner is before this Court with this transfer petition, with a prayer to transfer the proceedings from Chennai to Chidambaram.

2. Heard the learned counsel for the petitioner and the learned counsel on behalf of the respondent.

3. There are two proceedings now pending before two different Courts. The proceedings for divorce initiated by the respondent is pending before the II Additional Family Court, Chennai. The proceedings initiated by the petitioner for restitution of conjugal rights is pending on the file of Sub-Court at Chidambaram.

4. The petitioner is a resident of Chidambaram in the district of Cuddalore. According to the petitioner, it would not be possible for her to travel all along from Chidambaram to Chennai for the purpose of defending the proceedings in HMOP No.3732 of 2015.

5. The transfer petition is opposed by the respondent only on the ground that being an employee of Metro Water, he would not be given leave and as such, it would be difficult to appear before the Sub-Court at Chidambaram.

6. The Trial Court at Chidambaram, being a Sub-Court, the personal appearance of the respondent is not necessary on all the hearing dates. I am therefore of the view that there is no point in opposing the transfer on the ground that the respondent is an employee at Chennai.

7. 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.

8. Since there are two proceedings pending before two different Courts, it would be in the interest of both parties to transfer one of such matters to another Court, so as to enable the transferee court to adjudicate both the matters together. I am therefore of the view that the transfer petition deserves to be allowed.

9. The proceedings in H.M.O.P.No.3732 of 2015 is withdrawn from the file of II Additional Family Court, Chennai and is transferred to the file of Sub-Court, Chidambaram, for disposal along with H.M.O.P.No.88 of 2015.

10. The respondent is stated to be an employee of Metro Water at Chennai. According to the respondent, he would not be given leave by the authorities as it is an essential service. The respondent is given liberty to file appropriate application before the Trial Court to dispense with his personal appearance on the normal dates of hearing, subject to the condition that he would appear on all the effective dates of hearing and would cooperate for an early disposal of the matrimonial proceedings. In case, any such application is filed, the same shall be considered by the learned Trial Judge taking into account the employment and residence of the respondent at Chennai.

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

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

svki

To

1.The II Additional Judge
Family Court, Chennai

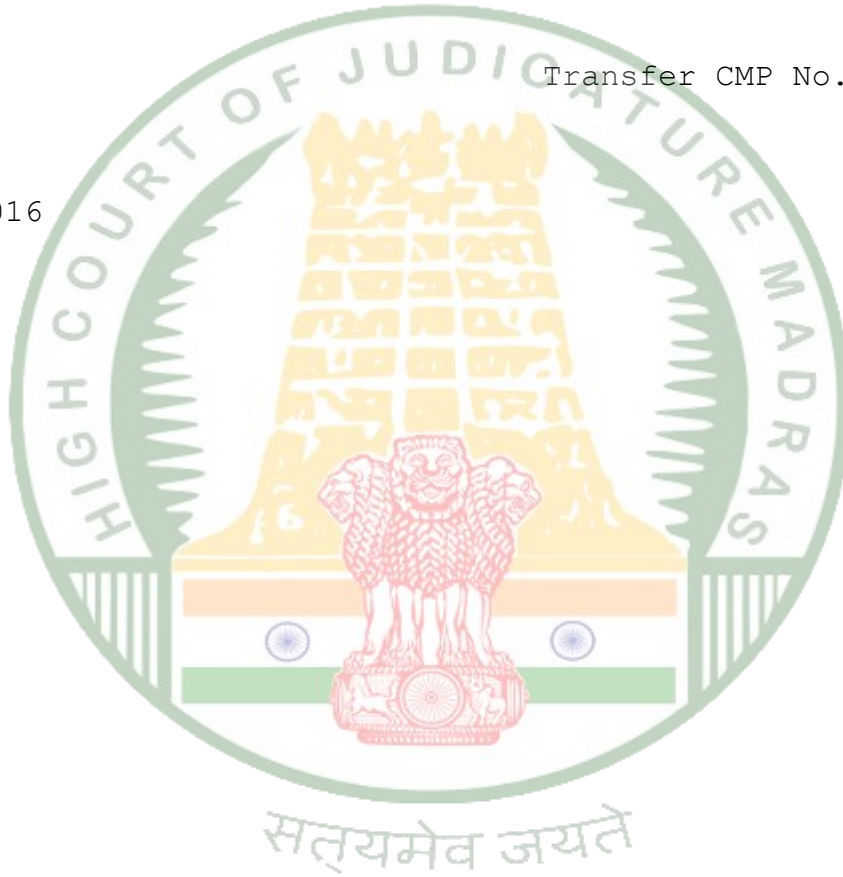
2.The Sub-Court, Chidambaram

+1 cc to M/s.N.Sankaravadivel Advocate sr 68985

+1 cc to M/s.S.Francis Ashok Advocate sr 68956

Transfer CMP No.459 of 2016

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